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TABLE OF CONTENTS

CFE tax advisers europe

Opinion Statements

CFE tax advisers europe

OPINION STATEMENT

Opinion Statement ECJ-TF 3/2019 on the CJEU decision of 22 November 2018 in Case C-575/17, *Sofina*, on withholding taxes, losses and territoriality

Prepared by the CFE ECJ Task Force
Submitted to the EU Institutions on 10 October 2019

The CFE Tax Advisers Europe note that the Court's decision in *Sofina* may have extended the standard of comparability, requiring to take into consideration the (foreign) non-dividend income of the recipient when comparing the tax treatment of domestic and outbound dividends. This comparator, however, upsets the principle of territoriality, as accepted by the Court in *Futura* and *Centro Equestre*, by requiring the source State to take into account losses that the non-resident taxpayer has in the residence State.

Taken at face value, *Sofina*'s impact may extend well beyond withholding taxes specifically and dividend taxation more generally by attaching a "no-loss" condition to all source State taxing rights. It may arguably even bar the permanent establishment State from taxing profits attributable to that permanent establishment if the foreign head office is in a loss position.

Moreover, applying Sofina to everyday international tax law might also not be an easy task and push administrative feasibility to its limits. The Court effectively seems to propose a non-discriminatory deferral of taxation that is combined with a domestic regime that leads to a subsequent recapture if (and only if) the non-resident taxpayer becomes profitable during a subsequent tax year.

CFE Tax Advisers Europe is a Brussels-based umbrella association uniting 30 European national tax institutes and associations of tax advisers from 24 European countries. Founded in 1959, CFE represents more than 200,000 tax advisers. CFE Tax Advisers Europe is part of the European Union Transparency Register no. 3543183647-05. For further information regarding this opinion statement of the CFE ECJ Task Force please contact Prof. Dr. Georg Kofler, Chair of the CFE ECJ Task Force or Aleksandar Ivanovski, Tax Policy Manager at info@taxadviserseurope.org

This is an Opinion Statement prepared by the CFE ECJ Task Force[1] on the *Sofina*-case, in which the Fifth Chamber of the Court of Justice of the EU (ECJ) delivered its decision on 22 November 2018.[2] The Court held that the imposition of French dividend withholding tax violated the freedom of capital movement in light of the non-resident's overall loss situation.

I. Background and Issues

1. *Sofina* intertwines two issues that have so far been approached separately in ECJ case law: (dividend) withholding taxes, on the one hand, and the relevance of overall profitability of an entity on the Source State, on the other. The Court's judgment thus has potential implications far beyond the narrowly circumscribed issue of that case.
2. The complainants in the case were three Belgian companies who applied in France for reimbursement of dividend withholding tax levied for years during which these companies were in an overall loss position. They argued that the withholding tax put them at a disadvantage compared to French resident companies, which were not subject to withholding tax in the same circumstances.
3. Under French corporate tax rules, dividends received by a resident company are included in the normal tax base. They are thus subject to its ordinary 33,33 % tax rate if the company is in an overall profit position, but merely reduce a loss carry-forward if the company has overall negative income in the year it received such dividends. As a result, ignoring the different tax base[3] (and rates),[4] resident taxpayers would benefit from a cash-flow advantage (if they returned to profitability) or even a permanently lower tax burden (if they never became profitable).
4. Relying on the ECJ's decision in *Truck Center,*[5] French case law[6] had previously held this system to be compatible with EU freedoms, considering that the taxation of non-residents was merely a *different technique* that was not, however, discriminatory.
5. In light of more recent ECJ jurisprudence,[7] the Conseil d'Etat had doubts as to whether this argument could still be relied upon and decided to refer the following questions to the ECJ:

   (1) Must Articles [63 and 65 TFEU] be interpreted as meaning that the cash-flow disadvantage resulting from the application of withholding tax to dividends paid to loss-making non-resident companies, while loss-making resident companies are not taxed on the amount of the dividends they receive until the year when, if at all, they return to profitability, constitutes in itself a difference in treatment characterising a restriction on the free movement of capital?

   (2) Must the potential restriction on the free movement of capital referred to in the preceding question, in view of the requirements resulting from Articles [63 and 65 TFEU], be regarded as being justified by the need to ensure the effective collection of tax, since non-resident companies are not subject to the supervision of the French tax authorities, or by the need to safeguard the allocation of the power to impose taxes between the Member States?

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[2] FR: ECJ (Fifth Chamber), 22 November 2018, Case C-575/17, *Sofina and others*, EU:C:2018:943, ECJ Case Law IBFD.

[3] Net income vs gross dividends.

[4] 33 % for resident companies vs 25 % or a lower rate as provided by an applicable tax treaty for non-residents.

[5] BE: ECJ, 22 December 2008, Case C-282/07, *Truck Center*, EU:C:2008:762.

[6] FR: Conseil d'Etat, 9 May 2012, *Société GBL Energy*, Nos 342221 and 342222, RFJ 7/12 No. 774 ; Conseil d'Etat, 25 November 2015, *Kermadec II*, No 373128, RFJ 2/16, No. 139.

[7] NL: ECJ, 17 September 2015, Case C-10/14, C-14/14 and C-17/14, *Miljoen and others*, EU:C:2015:608.

(3) If application of the withholding tax at issue may in principle be accepted with regard to the free movement of capital:

– Do those provisions preclude the collection of withholding tax on dividends paid by a resident company to a loss-making non-resident company of another Member State where the latter ceases to trade without returning to profitability, while a resident company placed in that situation is not in fact taxed on such dividends?

– Must those provisions be interpreted as meaning that where taxation rules apply which treat dividends differently depending on whether they are paid to residents or non-residents, it is appropriate to compare the actual tax burden borne by each of them in respect of those dividends, so that a restriction on the free movement of capital resulting from the fact that those rules preclude for non-residents alone the deduction of expenses which are directly linked to the actual receipt of the dividends may be regarded as being justified by the difference in the rate of tax between the general tax payable in a subsequent year by residents and the withholding tax levied on dividends paid to non-residents, where that difference compensates, with regard to the amount of tax paid, for the difference in the taxable base?'

II. The Judgment of the Court of Justice

6. In its judgment, the Court followed AG Wathelet's analysis,[8] concluding that the French withholding tax violated the freedom of capital movement. The Court began by clearly setting out the different treatment of resident and non-resident taxpayers under the French legislation: while the tax imposed on dividends paid to non-residents was "immediate and definitive", the taxation of residents receiving the same dividends was contingent on their "net-loss making or net-profit making".[9] As a result, resident taxpayers benefit, first, from a cash-flow advantage and, second, from the uncertainty whether there will be any tax levied on those dividends in the future.[10]

7. Explaining that the assessment whether a less favourable treatment exists had to be made for each tax year taken individually,[11] the Court held that for loss-making taxpayers in the year of receiving the dividends, both the cash-flow disadvantage and the contingency amounted to restrictions of the free movement of capital.[12]

8. Even before formally moving to considering possible justifications for these disadvantages, the Court made it plain that the French government could not rely on the lower tax rate applied to dividends paid to non-residents: first, the lower French rate did not prevent Belgium from levying additional tax;[13] second, the potential existence of other advantages cannot compensate for established disadvantages;[14] third, the lower tax rate is irrelevant in circumstances where residents benefit from a de-facto exemption due to their definitive loss situation.[15]

[8] Opinion of AG Wathelet of 7 August 2018, Case C-525/17, *Sofina and others*, EU:C:2018:650.
[9] *Sofina and others* (C-575/17), para. 28.
[10] *Ibid*.
[11] *Sofina and others* (C-575/17), para. 30.
[12] *Sofina and others* (C-575/17), para. 34.
[13] *Sofina and others* (C-575/17), para. 36.
[14] *Sofina and others* (C-575/17), para. 37-38.
[15] *Sofina and others* (C-575/17), para. 38.

9. The ECJ then repeated its long-standing jurisprudence that a restriction of the free movement of capital can only be justified by a lack of objective comparability or the existence of an overriding reason in the public interest, before considering comparability and two such potential grounds of justification.[16]

10. On comparability, the Court engaged in the French government's argument[17] based on the ECJ's *Truck Center* judgment, namely that the withholding tax imposed on non-residents merely took into account the different situations of residents and non-residents with respect to France's capacity to collect taxes. The Court gave short shrift to this position, distinguishing *Truck Center* from the case at hand on the grounds that the taxation of residents was not in doubt in there, whereas loss-making resident taxpayers would be exempt in the situation under examination.[18]

11. On the first justification based on the allocation of powers of taxation between the Member States involved, the Court concluded, remarkably, that France was not hindered from granting the same deferral it afforded to residents also to non-residents, noting that

    > "the deferral of the taxation of dividends received by a loss-making non-resident company would not mean that the French State has to waive its right to tax income generated on its territory. The dividends distributed by the resident company would, in fact, be subject to taxation once the non-resident company became profitable during a subsequent tax year, in the same way as is the case for a resident company in a similar situation".[19]

    Acknowledging that such deferral would result in a loss of tax revenue if the non-resident taxpayer never became profitable again, the Court dismissed that consequence as a mere "reduction in tax revenue [that] cannot be regarded as an overriding reason in the public interest which may be relied on to justify a measure which is, in principle, contrary to a fundamental freedom".[20] This is all the more true, the Court continued, where the Member State accepts that same exemption for resident companies that cease trading without returning to profitability.

12. On the second justification based on the need for an effective collection of tax, the Court reiterated its long-standing jurisprudence upholding the legitimacy of both that ground and the method of retention at source,[21] but ultimately rejected the proportionality of the measure in the concrete case: Since the disadvantage stemmed from the denial of a deferral of taxation in a loss situation, the question was merely whether in this case a withholding tax was indeed necessary to achieve the aim of the effective collection of tax.[22] The Court denied this, proposing an alternative measure that would be equally effective in addressing France's legitimate concerns about tax collection while preserving the same beneficial deferral of taxation for non-residents as for residents.

13. Testing that alternative measure, the Court based its conclusion on three arguments:

    First, "the rules on the deferral of taxation in the event of losses constitute, inherently, a derogation to the principle of taxation during the tax year in which the dividends are distributed".[23]

    Second, "it would be the duty of non-resident companies to provide the relevant evidence to allow the tax authorities of the Member State of taxation to determine that the conditions, laid down in the legislation, for benefiting from such a deferral have been met".[24]

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[16] *Sofina and others* (C-575/17), para. 46.
[17] The argument was also supported by the Belgian, German, and UK governments in that case.
[18] *Sofina and others* (C-575/17), paras 51-52.
[19] *Sofina and others* (C-575/17), para. 59.
[20] *Sofina and others* (C-575/17), para. 61.
[21] *Sofina and others* (C-575/17), para. 68.
[22] *Sofina and others* (C-575/17), para. 70.
[23] *Sofina and others* (C-575/17), para. 71.
[24] *Sofina and others* (C-575/17), para. 72.

Third, the "mutual assistance mechanisms existing between the authorities of the Member States are sufficient to enable the Member State in which the dividends are paid to check the accuracy of the evidence put forward by the non-resident companies".[25]

14. The Court finally addressed the main practical concern of deferring taxation, namely the possibility to collect a tax on distributed dividends in later years when the non-resident company has returned to profitability, only indirectly, stating that "Article 4(1) of Council Directive 2008/55/EC[26] … allows the Member State in which dividends are paid to obtain, from the Member State of residence, the information necessary to allow it to recover a tax liability which arose when the dividends were distributed".[27]

15. Consequently, the Court held the French withholding tax violated the free movement of capital, and saw no need to answer the question concerning the deductibility for tax purposes of expenses directly related to the dividend paid to non-residents.[28]

III. Comments

A. Comparability and justification: what about "territoriality"?

16. This judgment has potentially far-reaching consequences for the taxation of cross-border situations and the allocation of taxing rights in the European Union (and beyond) due to its novel interweaving of established doctrine with more progressive stances both on comparability and potential justification of restrictions. To our knowledge this is the first corporate tax case in which the Court forces the Source State to take into account losses that are completely unrelated to Source State income.

17. At first glance, the Court's approach to establish comparability of non-residents and residents appears consistent with its long-standing jurisprudence, according to which non-residents are in a comparable situation to residents with respect to income on which the source state has decided to tax them.[29] However, neither the Advocate General nor the Court made reference to the even longer established territoriality exception to such comparability. Since *Futura Participations and Singer*[30] it had been accepted – with few exceptions related to the subjective ability to pay of individual taxpayers[31] –that non-residents would only ever be in a comparable situation to residents of the source state in respect of their income derived from activity in that state. Faced with a tax system where "for the purpose of calculating the basis of assessment for non-resident taxpayers, only profits and losses arising from their [source State] activities are taken into account in calculating the tax payable by them in that State",[32] the Court concluded in that judgment: "Such a system, which is in conformity with the principle of territoriality, cannot be regarded as entailing any discrimination, overt or covert, prohibited by the

[25] *Sofina and others* (C-575/17), para. 73.

[26] Replaced by Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, OJ 2010 L 84, p. 1.

[27] *Sofina and others* (C-575/17), para. 75.

[28] AG Wathelet had concluded, unsurprisingly, that such expenses needed to be deductible also for non-resident companies under the same conditions as for residents.

[29] FR: ECJ, 14 December 2006, Case C-170/05, *Denkavit Internationaal and Denkavit France*, EU:C:2006:783, para. 35; UK: ECJ, 12 December 2006, Case C-374/04, *ACT Group Litigation,* EU:C:2006:773, para. 68; NL: ECJ, 8 November 2007, Case C-379/05, *Amurta*, EU:C:2007:655, para. 38; IT: ECJ, 19 November 2009, Case C-540/07, *Commission v Italy*, EU:C:2009:717, para. 52; ES: ECJ, 3 June 2010, Case C-487/08, *Commission v Spain*, EU:C:2010:310, para. 51; DE: ECJ, 20 October 2011, Case C-284/09, *Commission v Germany*, EU:C:2011:670, para. 56; NL: ECJ, 17 September 2015, Case C-10/14, C-14/14 and C-17/14, *Miljoen and others*, EU:C:2015:608, para. 67.

[30] LU: ECJ, 15 May 1997, Case C-250/95, *Futura Participations and Singer*, EU:C:1997:239.

[31] See LU: ECJ, 18 July 2007, Case C-182/06, *Lakebrink and Peters-Lakebrink*, EU:C:2007:452; NL: ECJ, 16 October 2008, Case C-527/06, *Renneberg*, EU:C:2008:566; NL: ECJ, 9 February 2017, Case C-283/15, *X*, EU:C:2017:102; see also CFE ECJ Task Force, "Opinion Statement ECJ-TF 4/2017 on the Decision of the Court of Justice of the European Union of 9 February 2017 in X (Case "Pro-Rata Personal Deductions"), Concerning Personal and Family Tax Benefits in Multi-State Situations", ET 2018, 163 (163-169).

[32] *Futura* (C-250/95), para. 21.

Treaty".[33] The Court later affirmed and generalized that result, holding in *Centro Equestre* that it was "clear from the Court's case law that a tax system under which, for the purposes of calculating the basis of assessment for non-resident taxpayers in a particular Member State, only profits and losses arising from their activities in that State are taken into account is consistent with the principle of territoriality enshrined in international tax law and recognised by Community law".[34]

18. The Court in *Sofina* deviated from that precedent without any acknowledgment of its decisions in *Futura* and *Centro Equestre* and suggested that comparability derived from the source state's unilateral decision to tax a particular stream of income of a non-resident extends to the entirety of the taxpayer's activities. That result, while compatible with the wording of the cited precedents in *Commission vs Germany* and *Miljoen*,[35] which do not explicitly distinguish between a particular stream of income and the entirety of a person's income ("as soon as a Member State … imposes a charge to tax *on the income*, … the situation of those non-resident taxpayers becomes comparable to that of resident taxpayers"). Nevertheless it upends the traditional understanding of those precedents as concerns equal treatment of non-residents with residents, further blurring the line on the relevance of the territorial boundaries commonly drawn in international tax law. The decision could be regarded as an outlier, since the precedents on territoriality seemingly were not referred to in domestic proceedings[36] nor – as far as one can see from the AG Opinion and the judgment – before the ECJ.

19. Importantly, however, the Court did not "revive" the territoriality exception as a ground of justification, either. Instead, it dismissed the claim based on the "balanced allocation of taxing rights" – often considered a version of the territoriality argument at the justification level. This is remarkable: The Court rejects the argument that France's taxing rights would be affected even in a situation where it could not levy any tax on the dividends paid from profits created by a resident company, since it would accept the same non-taxation result for dividends paid to a (loss-making) resident company. While this reasoning is logically coherent, the outcome is difficult to reconcile with earlier judgments such as *National Grid Indus,* where the Court upheld a Member State's right to impose a tax on (streams of) income generated within its territory even in situations where the taxpayer would not have to pay such a tax if he were a resident.[37] There, the Court held that a Member State was "entitled to tax the economic value generated by an unrealised capital gain in its territory even if the gain has not yet actually been realised".[38] Even more strikingly, it suggests a stricter obligation to take into account foreign losses for the source state than the *Marks & Spencer* jurisprudence imposes on residence states.[39]

20. It is unclear if the Court intended to put this well-established ground of justification in serious doubt. There are three possible ways of reading this point: i) it is an "outlier" decision unlikely to have an impact in future cases; ii) the Court's conclusions in *Sofina* are limited to the concrete case of (dividend) withholding taxes in the specific context in which the parent company has losses and the domestic law (of France) is intended to pursue a specific goal of neutrality; iii) the Court has changed course concerning the comparability analysis by taking into account the overall ability to pay of the non-resident taxpayer.

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[33] *Futura* (C-250/95), para. 22.

[34] ECJ, 15 February 2007, Case C-345/04, *Centro Equestre*, EU:C:2007:96, para. 22.

[35] As well as the case law referenced there. See *supra* footnote 29.

[36] FR: Conseil d'Etat, 20 September 2018, *Sofina, Rebelco, Sidro*, Nos 398662, 398663, 398666, 398672, 398674 and 398675.

[37] ECJ, 29 November 2011, Case C-371/10, *National Grid Indus*, EU:C:2011:785, para. 44–49. See also CFE ECJ Task Force, Opinion Statement of the CFE on the Decision of the European Court of Justice of 29 November 2011 in Case C-371/10, National Grid Indus BV and Business Exit Taxes within the European Union: Prepared by the ECJ Task Force of the CFE and Submitted to the European Institutions in March 2013, 53 Eur. Taxn. 6 (2013), Journals IBFD (accessed 25 Sep. 2019).

[38] *Ibid*., para. 49.

[39] See further *infra* III.C.

21. It is further noteworthy that the Court did not (and perhaps was not asked to) consider the justification of the coherence of the tax system. France could have argued that the disadvantage resulting from the disregard for its foreign losses was necessary to maintain the coherence of its tax system, as it would not take into account profits derived from foreign activities, either. The ECJ has consistently accepted this argument, which boils down to a claim of corresponding advantages directly linked to the disadvantage imposed on the taxpayer,[40] when considering the residence state's right to deny a deduction of foreign losses.[41] In *Sofina*, the Court did not consider that argument, but instead addressed the possible relevance of compensating advantages before grounds of justification – evoking (without explicitly labelling it thus) its "neutralization" doctrine developed in its case law from *Amurta* to *Société Générale*.[42] The Court's first point made in this context – that the reduced withholding tax under the Belgian-French DTC did not limit Belgium's right to tax[43] – can probably be regarded as extraneous to its decision, since it is difficult to imagine that the Court would have found otherwise if the DTC had allocated an exclusive taxing right to France.

22. The Court's analysis of the proportionality of retention at source is also interesting. It is noticeable that it did not explicitly mention 'proportionality' in the judgment, but seemingly imbeds the conditions of that test in the prerequisites for the legitimacy of the 'effective collection of tax' as a ground of justification.[44] In substance, the Court undertakes the steps traditionally viewed as part of the proportionality test, analysing the suitability and necessity of the restrictive measure to achieve a legitimate aim. Unusually, however, the judgment's focus is not on the appropriateness of the measure implemented by France, but on the suitability of an alternative system of taxation, where the source state would (1) defer collection of withholding tax for loss-making non-resident companies and (2) subsequently collect that tax if and when such companies become profitable. The Court concluded that replacing the existing withholding tax system with an alternative collection mechanism "would not undermine the achievement of … the effective collection of tax",[45] making three separate arguments in favour of such an alternative.

23. First, the fact that for the majority of companies, deferral would be granted in the presence of losses showed that the purported aim of immediate collection of tax could not be all that fundamental to France. This argument essentially concerns the suitability of France's withholding tax system to contribute to a *legitimate* aim. The Court implicitly appears to demand consistency in Member State's policies, which France had undermined through its liberal approach to domestic dividend taxation.

24. Second, under the Court's alternative, non-resident companies would need to prove that they are in the same situation as resident companies who do not bear a tax in order to benefit from deferral of taxation. The Court thus indicates that the burden would entirely fall on non-resident companies to prove that they are loss-making in a given year. The focus appears to be to show that such an alternative mechanism would not be unduly burdensome for the Member State; it does not address the question how exactly a taxpayer would provide that proof.[46]

25. Third, the Court pointed to the ability of the source state to rely on administrative assistance enshrined in Directive 2011/16/EU in order to verify the proof provided by the taxpayer. It backed that argument further with a reference to Directive 2008/55/EC on the recovery of claims. In the Court's estimation, the existence of these instruments made it unnecessary and thus disproportionate to apply a

[40] Where, at least since ECJ, 7 November 2013, Case C-322/11, *K*, EU:C:2013:716, the fact that advantage and disadvantage concern the same taxpayer and the same tax seem to be considered sufficient for the Court to consider such "direct link" to be established. See *K* (C-322/11), para. 70.

[41] See e.g. *K* (C-322/11), para. 71.

[42] See CFE Opinion Statement ECJ-TF 1/2016.

[43] *Sofina and others* (C-575/17), para. 36.

[44] *Sofina and others* (C-575/17), para. 67.

[45] *Sofina and others* (C-575/17), para. 70.

[46] See *infra* III.B.

withholding tax on outbound dividends in all circumstances – from the perspective of the legitimate aim to collect taxes. The judgment did not address the practical difficulty of following up on eventual profits made by a non-resident company in the years after their successful claim not to levy withholding tax. The Court seems to assume that the Member State from which the dividends originated will be able to rely on information given by the Member State of residence. In contrast to the necessary proof the taxpayer has to provide for losses when bringing a claim, however, at that stage the taxpayer has little incentive to instigate that, leaving open the question who exactly is going to undertake the task of recalculating such eventual profits in accordance with the source State's tax rules if that were necessary (which the French Conseil d'État does not see as being the case).[47]

B. Implementation of the judgment

26. The judgment did not address how the taxpayer's overall loss position ought to be determined. This issue was not raised in *Sofina* (presumably because the taxpayers had a deficit under both States' rules), but it would seem logical to apply the source State's rules to avoid unequal treatment.[48] Needless to say, calculation of a foreign corporation's worldwide income under source State's rules may at least be a nuisance for taxpayers and administrations alike, and would be so year after year to see if the company had eventually become profitable so that the recapture could be effectuated.[49] However, the Conseil d'État took a different approach in its follow-up judgment,[50] by relying on a loss determined on Belgium law (state of residence of the taxpayer).
27. In any event, as the Court points out, it is up to the non-resident company to provide proof of its overall loss position. It is up to Member States to develop the administrative procedure to process such claims. Presumably, it will be sufficient for the source state to provide a refund of withholding tax only ex post, once proper proof has been provided by the taxpayer.
28. The Court's concern in *Sofina* was for (overall) loss-making companies. However, the same issues arise for the levy of withholding taxes on non-residents with losses that do not exceed the received dividends. In the equivalent situation, a resident recipient would only pay tax on a portion of the dividends[51] – but the rest is deferred just as in an overall loss situation, so the situation is essentially the same.

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[47] See further III.B.

[48] See for the reverse situation from the residence State's perspective, e.g., FI: ECJ, 21 February 2013, Case C-123/11, *A Oy*, EU:C:2013:84, paras 57-61, and even more pronounced Opinion AG Kokott, 19 July 2012, Case C-123/11, *A Oy*, EU:C:2012:488, paras 70-76, especially para. 73: "In my view, the reply to the second question should then be that the losses to be taken into account must *in principle* be calculated according to the tax law of the receiving company's State of residence. As the French Government also submitted, only in that way would calculation of the losses lead to equal treatment in cases within a single Member State and in cross-border situations, that is to say, a merger with a resident subsidiary and a merger with a foreign subsidiary would receive equal treatment for tax purposes. Equal treatment in that way would remove the restriction of the freedom of establishment which, as we have seen, arises precisely from the different treatment of the two situations."

[49] At least two likely practical problems appear noteworthy: First, timing. The final tax assessment in the company's residence Member State for the relevant year in which dividends are received and withholding tax applied will typically only be available at a later moment in time. Second, recalculation. Providing a certified tax assessment from the residence Member State will likely not suffice, but taxpayers will have to provide a verifiable recalculation of their tax result in accordance with the (each!) source state's tax rules. It is not obvious which authority can even properly verify that recalculated result, since it requires authoritative knowledge of both the facts and the law in both relevant jurisdictions. Would it be proportionate to require companies to undergo a joint audit by residence and source State authorities?

[50] Conseil d'État, 27 February 2019, No. 398662, FR:CECHR:2019:398662.20190227 – Sofina („Il résulte de ce qui précède que le droit de l'Union européenne fait obstacle à ce qu'en application des dispositions du 2 de l'article 119 bis du code général des impôts, une retenue à la source soit prélevée sur les dividendes perçus par une société non-résidente qui se trouve, au regard de la législation de son Etat de résidence, en situation déficitaire.")

[51] Consider the following example: a company has operating losses of 100 and receives 120 in dividends. A non-resident would be subject to 15 % withholding tax on 120, amounting to 18. A resident would bear a corporate tax of 33 % on 20 (120-100), amounting to only 6.6. The remaining tax liability on the dividends is deferred to future profit-making years by virtue of the eliminated loss carry-forward.

29. Finally, the implementation of the Court's preferred alternative to France's dividend withholding tax may run counter to bilateral tax treaties. The Court assumed that France could at any point collect taxes from non-resident companies once they become profitable again. Yet under bilateral tax treaties, source States are only entitled to impose a tax on distributed dividends, and not on profits of non-resident companies stemming from other activity. While this is unlikely to be an insurmountable obstacle, it will require a careful legislative response from Member States, e.g. to ensure that any later charge would be construed merely as the collection of the initial tax liability, and not a tax in its own right on later emerging profits.

C. Wider implications

30. The judgment in *Sofina* renews doubts concerning the role of the justification ground "balanced allocation of taxing powers" in general[52] and the continued application of the "definitive loss doctrine" especially. This doctrine, which is both long-established and continuously upheld – as well as much-internally criticised[53] – stands in marked tension to the latest judgment. Taking the Court's dismissal of the justification of a balanced allocation in *Sofina* at face value, it appears difficult to reconcile with that doctrine, which – in the reverse case of an overall loss arising from a company's activity in the source state – allows Member States to tax a resident company on its domestic positive income immediately and in full, disregarding the (cash-flow) disadvantage for the taxpayer. While this tension has already been present in the juxtaposition of the *Marks & Spencer* and the *Schumacker* lines of case law, especially looking at *Lakebrink*[54] and *Renneberg,*[55] it was possible to distinguish those lines on the ground that the latter had exclusively concerned individuals, whose personal circumstances the Court seemed to afford special consideration that would not be available to companies. In *Sofina*, the positions seem almost reversed: while the Court held individual taxpayers (in *Schumacker* to *X*[56]) to be *not* comparable with regard to their foreign income *except* to the extent that their residence State could not fully take into account their personal circumstances, it seems to accept automatic comparability for all of a non-resident company's activities even if the source State exercises only a very limited tax jurisdiction over a small part of the non-resident's income. While the decision thus would appear finally to bring the tension of the different lines of jurisprudence into the open, the Court did not address it.

31. As a result (and with a little simplification), there appear to be three different approaches to the treatment of foreign losses: First, following the *Marks & Spencer* case law, losses arising outside a company's residence State can only be "transferred" if they cannot be taken into account anywhere else; second, following the *Schumacker-Renneberg* case law for individuals, losses arising outside a source State may be *partially* "transferred" if they cannot be taken into account in the residence State; third, following *Sofina*, losses arising outside a source state may be "transferred" (at least temporarily) and lead to a deferral of taxation to the extent that a resident's tax liability would be lower had they incurred the same losses in the source state.

32. It must be noted that the implications of the decision may go beyond intra-EU situations: although the Court has acknowledged that investments from third countries take place in a "different legal context"[57]

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[52] See comments *supra* para. 19.

[53] See e.g. Opinion of AG Kokott of 19 July 2012, C-123/11, *A Oy*, EU:C:2012:488, paras 47-54; Opinion of AG Mengozzi of 21 March 2013, Case C-322/11, *K*, EU:C:2013:183, paras 63-89; Opinion of AG Kokott of 23 October 2014, Case C-172/13, *Commission v United Kingdom*, EU:C:2014:2321, paras 49-53; Opinion of AG Wathelet of 3 September 2015, Case C-388/14, *Timac Agro*, EU:C:2015:533, para. 66.

[54] LU: ECJ, 18 July 2007, Case C-182/06, *Lakebrink and Peters-Lakebrink*, EU:C:2007:452.

[55] NL: ECJ, 16 October 2008, Case C-527/06, *Renneberg*, EU:C:2008:566.

[56] NL: ECJ, 9 February 2017, Case C-283/15, *X*, EU:C:2017:102; see also CFE ECJ Task Force, "Opinion Statement ECJ-TF 4/2017 on the Decision of the Court of Justice of the European Union of 9 February 2017 in X (Case "Pro-Rata Personal Deductions"), Concerning Personal and Family Tax Benefits in Multi-State Situations", ET 2018, 163 (163-169).

[57] See ECJ, 18 December 2007, Case C-101/05, *A*, EU:C:2007:804, para. 36.

by reason of the presence of secondary law governing the cooperation of tax administrations in Member States, the significance of this difference disappears where such cooperation with third countries is ensured by other means, such as a bilateral or multilateral treaty.[58]

33. Although this may be a smaller concern from an EU tax law perspective, preventing the source state from imposing a tax on positive domestic income has the potential fundamentally to upset the allocation of taxing rights decided in most bilateral tax treaties: under the so-called "Authorized OECD Approach", a state in which a company has established a permanent establishment (PE) is entitled to tax profits attributable to that PE irrespective of the overall situation of the taxable entity. Taking the Court's judgment in *Sofina* at face value, companies may be entitled to oppose such a tax charge on the grounds that they would not have to bear it if they were resident companies. This, in turn, would potentially (re)introduce a significant difference in the taxation – in the source state – of PEs and subsidiaries. Since that difference would be in favour of non-residents, it would not amount to a restriction of the fundamental freedoms, however. The same may be relevant in the context of the transfer of assets from assets from the PE to the Head Office in the framework of the exit taxation rules under the ATAD.[59]

IV. The Statement

34. The CFE Tax Advisers Europe note that the Court's decision in *Sofina* may have extended the standard of comparability, requiring one to take into consideration the (foreign) non-dividend income of the recipient when comparing the tax treatment of domestic and outbound dividends. This comparator, however, upsets the principle of territoriality, as accepted by the Court in *Futura* and *Centro Equestre*, by requiring the source State to take into account losses that the non-resident taxpayer has in the residence State.

35. Taken at face value, *Sofina*'s impact may extend well beyond withholding taxes specifically and dividend taxation more generally by attaching a "no-loss" condition to all source State taxing rights. It may arguably even bar the permanent establishment State from taxing profits attributable to that permanent establishment if the foreign head office is in a loss position.

36. Moreover, applying Sofina to everyday international tax law might also not be an easy task and may push administrative feasibility to its limits. The Court effectively seems to propose a non-discriminatory deferral of taxation that is combined with a domestic regime that leads to a subsequent recapture if (and only if) the non-resident taxpayer becomes profitable during a subsequent tax year.

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[58] See, by analogy, ECJ, 10 February 2011, Cases C-436/08 and C-437/08, *Haribo and Salinen*, EU:C:2011:61, para. 73.

[59] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, [2016] OJ L 193/1, EU Law IBFD.

CFE Tax Advisers Europe Response to the OECD Public Consultation Document: Secretariat Proposal for 'Unified Approach' Under Pillar One

Submitted by CFE to the OECD on 12 November 2019
Endorsed by the Global Tax Advisers Platform

CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 26 European countries, associated via the Global Tax Advisers Platform (GTAP) with more than 600,000 tax advisers. CFE is part of the EU Transparency Register no. 3543183647-05.

CFE Tax Advisers Europe together with the Asia-Oceania Tax Consultants' Association ("AOTCA") and the West African Union of Tax Institutes ("WAUTI"), established the Global Tax Advisers Platform ("GTAP") in 2013. GTAP is an international platform, representing more than 600,000 tax advisers in Africa, Asia-Oceania and Europe, seeking to bring together national and international organizations of tax professionals from all around the world. The principal aim of GTAP is to promote fair and efficient operation of the global tax framework, including recognition of the rights of taxpayers and advancing global cooperation among tax professionals.

CFE Tax Advisers Europe would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Piergiorgio Valente, President of CFE Tax Advisers Europe and Chairman of the Global Tax Advisers Platform (GTAP), Stella Raventós-Calvo, Chair of the CFE Tax Advisers Europe's Fiscal Committee, or Aleksandar Ivanovski, CFE Tax Policy Manager at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/ For further information regarding GTAP please visit http://www.taxadviserseurope.org/about-us_gtap/

CFE Tax Advisers Europe welcomes the opportunity to contribute to the public consultation on the OECD Secretariat proposals for a 'Unified Approach' under Pillar One concerning the taxation challenges of the digitalising economy. We recognise the initial stage of the new proposals, and that many details are yet to be finalised depending on the direction taken by the members of the Inclusive Framework at political level. CFE would welcome the opportunity to provide more elaborate comments to any new detailed technical proposals in due course.

Key Remarks of CFE Tax Advisers Europe

In responding to the questions posed, we wish to give the following preamble to our reply. We are very much aware of the historic significance of attempting to recognise new taxation rights for jurisdictions, where under present rules no income could be attributed to any nexus not based on physical presence. If the project is successful, it will represent a new departure in the development of global tax policy and the principles it lays down will be used in fashioning future fiscal rules, the need for which we currently do not know. It will become a major precedent.

Considering these circumstances, and in order to make meaningful progress in due course, CFE calls for more clarity and early consensus at political level as to the outcome of this process, recognising the consequences of departing from well-established principles of international tax law towards a more complex international tax system which partly introduces formulary apportionment.

For this reason, we are of the view that a number of key elements must be embedded as part of this process and its outcome:

1. **The rights of taxpayers must be respected and ensured as a key bulwark supporting certainty and positive adoption of any new rules** that address the taxation challenges of the digitalising economy. Any new rules should take into account that tax certainty for taxpayers and tax administrations alike are recognised by international stakeholders as a key factor in investment and other commercial decisions, with significant impact on economic growth.

2. Ensuring fairness by recognising new taxation rights for market jurisdictions is an important element of the process, but **the outcome must result in rules which are workable on day-to-day basis for tax administrations, taxpayers and their advisers.** If new income allocation rules are added on top of the existing set of rules that govern the international taxation system, complexity will be even greater.

3. A related point follows, that **the process needs to take administrative capacity issues at the level of tax administrations and taxpayers as a key consideration in designing the new rules**. Simplicity in implementation and administration of the rules ought to take precedence over other criteria.

4. It is important not to underestimate **the resources needed by tax administrations and capacity issues within tax administrations of developing and/or smaller countries** to deal with multilateral disputes.

5. We also recognise that the agreed rules will need to **assuage countries who have unilaterally introduced or are introducing their own digital services tax rules**, otherwise significant double taxation is at risk.

6. The rules should be framed in such a way that it is clear whether a company falls within the scope of the rules. **A default position that all taxpayers are 'within scope' unless they are subject to an exemption (carve out) is unacceptable, as a matter of certainty**. We believe that the solution should apply only to highly digital businesses.

7. At a minimum, any new rules should only apply where the country-by-country threshold is exceeded (750 million euro), as these rules as designed will undoubtedly result in a significant administrative burden. We also **suggest a profitability threshold in addition to the revenue threshold, in order to qualify more precisely the scope of the new rules**.

8. **The issue of losses needs to be addressed in an equitable manner**. In smaller economies, companies outgrow their domestic market at a relatively early stage. Such companies will undoubtedly incur losses when expanding into new markets. These losses should not only be absorbed in the resident country, while paying tax on profits elsewhere.

9. **Preventing tax disputes, and building international consensus on binding effects of dispute resolution is critical**. These proposals will not work unless there is consensus for all countries to sign up to the binding effect of dispute resolution, which can operate on a multilateral basis and not just on a bilateral basis. This will inevitably require the development of a brand new multilateral treaty.

10. The security and integrity of taxpayers' data must be assured and computational outcomes should be subject to audit and/or assurance so that issues of conflict, dispute and double taxation can be satisfactorily and economically resolved. For instance, CFE suggests considering a **"one-stop-shop" mechanism to audit Amount A.** Still, further discussions should not underestimate the difficulties in departing from the current entity-based approach and moving to one which uses figures from consolidated accounts, then allocating the resulting tax liability to certain members of the multinational group.

11. **More time should be allowed in order to arrive at workable solutions that will withstand the scrutiny and test of time.** A comprehensive solution should be able to keep within scope the ever-evolving nature of the digitalising business models, resolving the taxation challenges, but equally ensuring the sustainability of the process, which will justify the resources spent by taxpayers, their advisers and tax administrations on making the new rules a reality.

12. Finally, the outcome of this process, from a policy perspective, should recognise that 'value creation' must surely be an equilibrium between two sides of the spectrum: **risks taken by decisions made in the investing countries balanced against any meaningful value derived in market jurisdictions, primarily due to the relative immobility of the purchasers of goods and services**.[1]

Impact Assessment

A comprehensive economic impact assessment is required before taking this process forward, in particular to assess the impact and the combined effects of Pillar One and Pillar Two, as these two projects serve distinct, but concurrent objectives.

[1] The IMF for instance, considers the notion of 'value creation' as an incomplete standard by which to assess multinational tax arrangements, IMF Policy Note 'Corporate Taxation in the Global Economy', 2019, p. 18

Considering the historic significance of this project, much greater information must be ascertained on the serious impact that is to be expected. The impact analysis should establish the economical and administrative-side consequences of this project. For instance, data and research gaps indicate that even for advanced economies, little is known about the nature and scope of residual profits.[2]

More generally, existing research demonstrates that the tax burden does not always fall on the taxpayer who is legally responsible for the tax payment:

"In practice, the discussion regarding who bears a tax is often linked to the assumption that the economic burden may align with the legal tax liability. In reality, there can often be large and unintended differences between legal tax liability and ultimate economic incidence. In fact, legal tax liability often bears little relationship to who actually bears a given tax. Moreover, the dynamics whereby a tax burden is reallocated among different actors in the economy are not reflected in tax collection amounts, making economic incidence difficult to analyse".[3]

Research indicates that further studies are required to shed light on the criteria and conditions affecting the allocation of the tax burden, and the related link between tax remittance structure and economic incidence.[4] Further studies would help to shed light on the ways in which the role of business taxation in the administration of tax systems differs in smaller or developing economies. These important aspects concerning the administration of the tax system and the impact of new tax policy measures merit further consideration from taxation policymakers.

Definition of Scope

CFE recognises the efforts of the OECD Secretariat to identify common features of the initial three-approaches to the taxation challenges of the digitalising economy, in an attempt to define the commonly acceptable elements of business models within scope of the proposed rules.[5] As a rule, the proposals should be framed in such a way that it is clear whether a company falls within the scope of the rules, as a positive obligation, rather than on the basis of excluding certain industries. At present, the Secretariat proposals do not define the precise range of the business models within scope of the newly proposed rules.

In addition, considering the nebulous nature of the concept of 'consumer-facing business' models, which extends beyond technology software companies, it is extremely difficult to define which taxpayers are within the scope, significantly affecting tax certainty. This process should take into account that tax certainty for taxpayers and tax administrations alike is recognised by international stakeholders as a key factor in investment and other commercial decisions, which have a significant impact on economic growth.[6]

From CFE's perspective, a default position where all companies are 'within scope' unless they are subject to an exemption/carved out is unacceptable (e.g. as is currently the case for extractive businesses). We recognise the policy intention to bring into scope businesses which derive meaningful value from customer interaction, and who through such interaction create value without physical presence in a market jurisdiction. Where a B2B

[2] IMF Policy Paper "Corporate Taxation in the Global Economy" (2019), IMF Publishing, Washington DC.
[3] Anna Milanez, "Legal tax liability, legal remittance responsibility and tax incidence: Three dimensions of business taxation", OECD Taxation Working Papers, No. 32, OECD Publishing, Paris.
[4] Idem, page 43
[5] Para 19 of the OECD Secretariat Proposals for Unified Approach under Pillar One (October 2019)
[6] IMF/OECD (2017), OECD/IMF Report on Tax Certainty, updated with OECD/IMF 2019 Progress Report on Tax Certainty, published on 8 June 2019

business model involves sales of consumer products through intermediaries, clarity is required as to whether those are in scope.[7]

Crucially, considering that the new rules would undoubtedly result in a significant administrative burden, these should only apply where the country-by-country revenue threshold is exceeded (750 million Euro), in addition to a profitability threshold.[8] The temporal element of a business presence in a jurisdiction is another important aspect, for example, whether the business has had sustained engagement with the market of a number of years of activity. Such a 'temporal threshold' would ensure maintaining the sustainability of the new nexus rules in an ever-shifting business landscape.

CFE believes that it is important that new laws should be restricted by such thresholds for only very large highly digitalised companies. Any new measures must focus on the formulation of growth-orientated approaches, which leverage on the opportunities of digitalisation for economic growth.

Finally, upsetting the international tax framework without clear economic impact analysis will inevitably lead to adverse outcomes and great uncertainty for all stakeholders. Uncertainty will result in non-uniform application to entities and practices beyond the anticipated scope of the new laws. To mitigate this risk, any new rules should be aligned, as much as possible, with existing international tax principles and practice.

The New Nexus and Profit Allocation Proposals

Under the Secretariat proposals, applying a market jurisdictions approach is quite novel, which as a result recognises new taxation rights for market jurisdictions. Conversely, under present international tax rules, zero profit could be allocated to any nexus not based on physical presence. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, partly through formulary apportionment and use of proxies such as sales.

In principle, CFE Tax Advisers Europe supports the direction under which a taxable nexus is created in market jurisdictions, as a result of which a share of the deemed residual profit shall be allocated to market jurisdictions. However, CFE expects that all stakeholders recognise the consequences of departing from well-established principles of international tax law towards a more complex international tax system which partly introduces formulary apportionment.

As a result of these fundamental changes, more complexity is added to the system which may undermine the policy intention of the proposals. We recognise that tax systems are inherently complex, often for valid reasons (such as achieving fairness and inter-nation equity), however, we do urge the OECD and other stakeholders to clarify certain elements of the proposals before going forward.

For instance, the differentiation between routine profits and residual profits, a fraction of which is intended to be allocated to market jurisdictions, remains complicated and a source of potential further conflicts and disputes in allocating deemed residual profits.[9] For these reasons, clear guidance which will take the form of appropriate

[7] Large technology software companies, who mostly sell to other businesses (B2B), may be left out of scope, which might not be the intended outcome of this process.

[8] For instance, under Amount A, one could determine the amount of profits made in the market jurisdiction by considering a 10/10 ratio or indeed 20/20 ratio. For example, companies with a 10% profit margin would be within scope, with 10% of their excess residual profits being allocated to markets.

[9] "Routine profit is the profit that an independent contractor would be expected to earn, given that it does not share the overall risk of the business. Residual profit is profit earned by the business in excess of this routine profit. It is tempting to equate this distinction between the routine profit and residual profit to the economic distinction between the normal return on an investment and economic rent, even though they would be calculated differently. However, while there is some overlap between the two distinctions, they should not be thought of as equivalent. In sum, therefore, it is possible that the residual profit may be greater than, or smaller than, economic rent of the overall enterprise.", Michael

revision of relevant soft-law such as the OECD Transfer-Pricing Guidelines is necessary for precise demarcation of lines between routine and residual profits.

We recognise that in order to avoid potential spill over effects, the proposals intend to implement the new nexus rules as a standalone treaty provision, independently from the existing Permanent Establishment ("PE") definition in the OECD Model Tax Convention. However, irrespective of this intention, the relationship between these two provisions (Article 5 of the OECD Model Tax Convention) and the new nexus treaty provision needs to be clearly defined. As the OECD is no doubt aware, the relationship between these two provisions can have significant consequences on the *modus operandi* of the whole tax system, so careful demarcation will avoid taxpayers being subject to double taxation.

More generally, as regards existing transfer-pricing rules and the operation of the Arm's Length Principle, any new rules should be aligned, as much as possible, with existing international tax principles and practice.

Specific Comments Regarding Amounts A, B, C

Specific Comments on Amount A:

Clarity would be welcome on the determination of the deemed non-routine profits, which are at present subject to tax at the residence jurisdiction. According to the proposals, on the basis of global consolidated financial information, a deemed non-routine profit will partly be allocated to the market jurisdiction on the basis of formulary apportionment. To avoid double taxation of such profits in both the residence and market jurisdictions, the taxation right under Amount A should be adjusted to reflect the balance of avoiding double taxation.

Typically, if the countries to which profits are allocated under Amount A do not have double tax treaties (and in absence of domestic provisions for cross-border tax relief), juridical double taxation would occur. In addition, profit attribution on the basis of formulary apportionment could also lead to double economic taxation, which is not at present relieved by double tax treaties.

A "one-stop-shop" mechanism to audit Amount A is also suggested, which would subject the amount to a single review, and be accepted by all relevant taxing jurisdictions.

Specific Comments on Amount B:

CFE understands that the purpose of Amount B is to solidify existing returns under transfer pricing, rather than generating additional revenues for market jurisdictions. In this respect, certainty regarding the baseline would be welcome. As these rules appear to cover a wider range of businesses, clarity would be welcome as to what extent Amount B intends to reward particular industries or regions.

If Amount B becomes established, it has the potential to also apply to smaller companies that fall outside the scope of the rules. This would be acceptable only if it could act as a safe harbour guideline. For example, the globally accepted baseline could be built upon as a template for safe harbour thresholds for smaller companies, to reduce complexity over taxing profits when breaking into new markets.

P. Devereux, Alan J.Auerbach, Michael Keen, Paul Oosterhuis, Wolfgang Schön and John Vella, "Residual profit allocation by income", WP 19/01 March 2019, Oxford University; *idem*, IMF Policy Paper (2019), fn. 6

Specific Comments on Amount C:

There is considerable uncertainty regarding Amount C, in absence of clear political consensus on the scope of the principles underpinning this element, which is in essence a mechanism to adjust the above amounts where the activities justify allocation of additional profits in market jurisdictions. In spite of the elements of Amount C aiming to provide additional certainty and ease of disputes, the calculation of C deviates from the formulary elements under A and goes back to the Arm's Length remuneration under ALP.

Preventing tax disputes and building international consensus on binding effects of dispute resolution is critical. These proposals will not work unless there is consensus for all countries to sign up to the binding effect of dispute resolution, which can operate on a multilateral basis and not just on a bilateral basis. This will inevitably require the development of a brand new multilateral treaty. It is important not to underestimate the resources needed by tax administrations and capacity issues at level of tax administrations of developing and/ or smaller countries to deal with multilateral disputes.

Addressing the Issue of Losses

The issue of losses needs to be addressed in an equitable manner. In smaller economies, companies outgrow their domestic market at a relatively early stage. Such companies will undoubtedly incur losses when expanding into new markets. These losses should not only be absorbed in the resident country, while paying tax on profits elsewhere. As a consequence, certain "unicorn" companies will come to the end of their loss-making phase when these rules are likely to be rolled out, which will affect countries in which such companies have invested early on, and may potentially not see a return.

Availability of Financial Information

CFE understands that the approach to calculate the amounts A, B and C is to start from the 'top holding' and then dividing the profit, but the primary issue with this approach is the availability and divergence of financial information and the differing accounting rules and standards in different countries. From CFE's perspective, a comparative exercise between jurisdictions seems in order, in order to align the different accounting rules to arrive at similar results.

It is also essential to have a transparent data source, which can be the consolidated financial accounts, but the complexity of drilling down in the profit and loss account to a divisional/ segmented business line should not be underestimated. Companies may not have designed their accounting models/systems to report in such segmented business or regional lines and therefore, it will be important to consult closely with business regarding this issue.

In general, if information is not required in a published set of accounts, then a company will not produce that information. Consultation should also be carried out with relevant stakeholders concerning the development of any system serving as a data source, either to comply with reporting obligations or to justify/verify calculations concerning amounts A, B and C. CFE strongly believes that any systems used in the process must be future proof, i.e. capable of seamlessly moving into a real time environment without a root and branch revision being required.

CFE tax advisers europe

OPINION STATEMENT

CFE Tax Advisers Europe Response to the OECD Public Consultation Document: GloBE Proposal Under Pillar Two

Submitted by CFE to the OECD on 2 December 2019

CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes and associations and tax advisers' chambers from 26 European countries, associated via the Global Tax Advisers Platform (GTAP) with more than 600,000 tax advisers. CFE is part of the EU Transparency Register no. 3543183647-05.

CFE Tax Advisers Europe would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Piergiorgio Valente, President of CFE Tax Advisers Europe, Stella Raventós-Calvo, Chair of the CFE's Fiscal Committee, or Aleksandar Ivanovski, CFE Tax Policy Manager at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

CFE Tax Advisers Europe welcomes the opportunity to contribute to the OECD public consultation under Pillar Two - Global Anti-Base Erosion Proposal (GloBE). These comments supplement the response by CFE Tax Advisers Europe concerning the Unified Approach under Pillar One, submitted to the OECD Secretariat on 12 November 2019.

Key Remarks of CFE Tax Advisers Europe

CFE welcomes the ongoing discussion at intergovernmental level aimed at addressing the shortcomings of the international tax system that are exacerbated by the digitalisation of the economy. We therefore welcome the Public Consultation document ‘Global Anti-Base Erosion Proposal’ as blueprint for further negotiations among the members of the Inclusive Framework. From our perspective, however, there are too many variables in the GloBE proposal, with ramifications that could arise from the open policy and key design questions, including, for example, whether the solutions would focus on average global tax rate or jurisdiction by jurisdiction approach.

Therefore, as a minimum, CFE considers that the final design of the GloBE proposals should reflect the following fundamental principles:

- Certainty for taxpayers and tax administrations,
- Simplicity and minimal compliance costs and complexities, and
- Absence of double or multiple taxation.

Considering that Pillars One and Two serve distinct but concurrent objectives, we would like to set out the following key elements that according to CFE should be embedded as part of this whole process and its outcome:

1. The process needs to **address the interaction of the four elements of Pillar Two**, as it transpires that these are not intended to apply simultaneously, but no decision has been made as to which rule will take priority.

2. **The complexity of this proposal Pillar Two confirms the need for a streamlined multilateral cooperation process; otherwise the system will become unworkable.** The GloBE proposal is likely to result in a significant new administration and compliance burden for tax authorities and taxpayers: the additional resource required by tax authorities, on top of those required for Pillar One, should be taken into account. The profit reallocation rules under Pillar One will require multilateral agreement between many jurisdictions and is unlikely to be resolved for many years. It is not clear how this will be practically managed, and it may present significant administration and compliance issues for the administration of the GloBE proposal.

3. The introduction of **CFC rules are designed to achieve the same objective as the income inclusion rule**. From CFE’s perspective a simpler alternative to the income inclusion rule might be world-wide introduction of effective CFC rules.

4. There are potentially a **number of EU law points raised with the income inclusion rule.** Primary EU law (fundamental freedoms) requires EU Member States to refrain from imposition of additional taxes on the profits of an entity established in another Member State, unless the measures are limited in scope and target 'wholly artificial arrangements'.[1] Similarly, the tax on base eroding payments faces EU law challenges: denial of deduction by an EU Member State due to a lower tax rate in another Member State would be contrary to primary EU law (freedom of establishment and freedom to provide services in the Single Market).

5. The achievement of the policy aim to **establish global minimum tax** will depend significantly on the chosen model: jurisdiction-by-jurisdiction approach or an average global rate approach. The complexities in designing a minimum tax rate in a global context will be not only technically challenging but will require redoubling of the political efforts by the Inclusive Framework governments to ensure consensus, and subsequently, close international coordination.

6. **Clarity would be welcome on the interaction between Pillar One and Pillar Two –** CFE welcomes introduction of multilateral instruments where treaty benefits/ payments are being denied based on effective rate under Pillar Two, if the effective tax rate is based on a payment that is subsequently spread across multiple jurisdictions under Pillar One.

7. As with Pillar One **enhanced dispute prevention and resolution mechanisms will be essential**, including multilateral mandatory binding arbitration. In addition, for the GloBE proposal a key part of dispute prevention mechanisms will be ensuring that a consistent tax base is used.

8. CFE is concerned that **the use of financial accounts as a starting point for determining the tax base for the GloBE proposal would amount to more complexity**. Whilst we recognise the limitations and difficulties with determining the tax base by reference to the CFC rules of the shareholder's jurisdiction, it should be agreed that there would be *worldwide blending*[2].

9. CFE will **refrain from commenting on carve-outs at this stage of the process**, considering that there is at present no decision or consensus around the level of the minimum rate of tax that would apply under the GloBE proposal.

10. Finally, to evaluate the full effect of the existing BEPS standards, some of which are still under implementation in most countries of the Inclusive Framework, a longer-term perspective seems more appropriate to appreciate the entirety of the remaining BEPS issues. Within the **EU a number of anti-BEPS policy and legislative measures have been introduced with the ATAD directives, which significantly reduce the incentives to shift mobile tax bases to low-tax jurisdictions**.[3] Consequently, more time should be allowed to evaluate the full effect of the BEPS-related anti-avoidance measures, before any such complex rules are introduced.

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[1] Judgment of the Court of Justice of the European Union, Case C-196/04 *Cadbury Schweppes*, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue

[2] "Blending" means mixing of low-tax and high-tax income from different sources as set out in the GloBE proposals.

[3] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market and Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries

Impact Assessment

A comprehensive economic impact assessment is required before taking this process forward, in particular to assess the impact and the combined effects of Pillar One and Pillar Two, as these two projects serve distinct, but concurrent objectives.

Considering the historic significance of this project, much greater information must be ascertained on the serious impact that is to be expected. The impact analysis should establish the collateral economic and red-tape impact of this project.

GloBE and the Residual BEPS issues

Under the present proposals, there is a policy intention to address any remaining BEPS issues and the 'rate arbitrage' by exploring rules designed to give jurisdictions a remedy in cases where income is subject to no or very low taxation.

- **Income inclusion rule**, where income of a foreign (related) company would be included in the taxable base of the controlling one, provided the income was subject to no or very low taxation.

- **A tax on base eroding payments (undertaxed payments rule),** that would allow jurisdictions to deny treaty benefits if the beneficiary is not sufficiently taxed in the other jurisdiction.

- **Switch-over rule** that allows the **residence jurisdictions** to switch from an exemption to a credit method where profits belonging to a PE are undertaxed (below the minimum tax rate) and

- **Subject to tax rule** allowing assessment of withholding tax to income at source and denying treaty benefits on income subject to tax below the minimum tax rate.

Specifically, Pillar Two "Global Anti-Base Erosion Proposal", or "GloBE" proposal seeks to address outstanding BEPS issues by introducing a global minimum tax and providing "jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation". The approach would seek to apply an income inclusion rule and deduction denial in tandem to achieve the intended aim of global anti-base erosion.

We believe that a number of outstanding issues remain concerning the design and operation of the proposed rules. From CFE's perspective, it is not clear whether the fundamental principle underlying the Pillar Two proposal is to achieve a minimum effective tax rate at company/ entity level or at shareholder level; or whether it is to allow countries to protect their own tax base from base eroding payments. Achieving one of these goals would be sufficient to address the remaining concerns regarding the other goal. The four component parts of the GloBE proposals could be constructed as to address either or both of these policy objectives, but they will not do so without an upfront agreement on which are the primary underlying goals.

Any one of the four components would be difficult and complicated to implement effectively; additional challenge of the GloBE proposal is to address how these rules could be made to work effectively together (and with existing rules and Pillar One), without giving rise to significant levels of double or multiple taxation, and a compliance and administrative burden out of proportion to the issues which are being addressed.

Furthermore, CFE would recommend ensuring that only one rule or GloBE element applies to each structure, considering that the income inclusion rule is an alternative to the undertaxed payments rule – if both rules apply in respect of a particular structure, there would be double or multiple taxation. This is particularly relevant considering that countries may decide to adopt different rules. Consequently, it is essential that a clear demarcation is made as a matter of design between the four elements of the proposed GloBE solution, as there transpires that a considerable overlap between them exists.

In addition, the introduction of CFC rules are designed to achieve the same objective as the income inclusion rule. Similarly, the project needs to ensure that the EU's objectives as set out with establishment of a list of non-cooperative jurisdictions for tax purposes are closely aligned with those of the OECD, which is to increase transparency and encourage compliance with anti-BEPS measures.

To the extent that further action is required, from CFE's perspective a much simpler route to achieve the income inclusion rule might be to focus on existing CFC rules:

- All jurisdictions to reach an agreement on introducing effective CFC rules;
- CFC rules to include an additional minimum tax level test;
- Where income is taxed at a rate below the minimum tax level (using either the tax rules applicable to the parent company or the subsidiary jurisdiction) a CFC charge would automatically arise.

Furthermore, there seems to be an overlap of the proposed global anti-base erosion proposals with the current work under Action 5 of the BEPS project relating to identification of preferential regimes. Indeed, the recent progress report on preferential regimes also contains details of a new standard for substantial activity requirements within jurisdictions with no or low taxation, aiming to establishing a level playing field between the jurisdictions introducing substantial activity requirements in preferential regimes, with those offering low or no corporate tax.[4] The GloBe proposal might encourage countries to focus on patent boxes, due to the fact that 10% tax is the acceptable norm under the OECD BEPS Action 5 recommendations. The implication of this is that multinational companies will pay different tax rates because they have different types of business models – principally IP v the others.

More generally, it is critical that the measures are targeted at profits arising in countries where no real or substantive activity is carried on, in line with the aspirations of the BEPS project to pay tax where the "value is created". In addition, *de minimis* threshold should be considered to prevent these rules from becoming a barrier to business development, innovation and new markets.[5] This is relevant in particular as the risk of increased profit shifting concerns large global companies of a particular size.

[4] OECD, *Harmful Tax Practices - 2018 Progress Report on Preferential Regimes: Inclusive Framework on BEPS: Action 5*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris (2019), paragraph 6

[5] The Base Erosion and Anti-Abuse Tax (BEAT) under the Tax Cuts and Jobs Act in the United States applies to companies that exceed the $500 million revenue threshold only

Clarity would be welcome on the further steps concerning the income inclusion rule and whether it is OECD's policy to introduce globally the US Global Intangible Low-Taxed Income ("GILTI").[6] If this is indeed the case, we would welcome clarity that GILTI as a regime implemented in the US is the starting point for further work on the income inclusion rule, building on the recommendations of BEPS Action 3.

Carve Outs

CFE will refrain from commenting on any carve-outs at this stage of the process, considering that there is at present no decision or consensus around the level of the minimum rate of tax that would apply under the GloBE proposal. The minimum rate will no doubt determine the scope of the rules and will impact on other issues such as whether the rules are compatible with international obligations, including the EU fundamental freedoms. Therefore, a decision around the minimum rate is likely to drive the subsequent policy decisions around whether other carve-outs are required or desirable.

Use of Financial Accounts

CFE is concerned that the use of financial accounts as a starting point for determining the tax base for the GloBE proposal would amount to more complexity. Whilst we recognise the limitations and difficulties with determining the tax base by reference to the CFC rules of the shareholder's jurisdiction, the way forward might be *worldwide blending*.[7]

Such a broad approach to blending must be balanced against the increased complexity and administrative burden of either "jurisdiction-blending" or "entity blending". A *worldwide blending* approach would reduce compliance costs, if it is based on consolidated financial statements that have already been prepared for accounting purposes. For most taxpayers, this approach would entail separate system of accounting applied across a group. In addition, worldwide blending based on accounts might be consistent with the policy aim of addressing the 'public disquiet' about MNE's tax liability, because the amount of corporate income/ profits and tax paid globally are relatively easy to extract and confirm. A worldwide blending approach would also address some incidental tax design issues: for example, around the treatment of intra-group transactions such as dividends and foreign taxes which could be credited without having to determine whether that tax was paid at branch level, head office level or under CFC rules of a third jurisdiction.

We recognise the limitations of such an approach, as described above. Intra-group margins are generally eliminated in consolidated statements which might compromise the determination of an effective tax rate. In addition, consolidation standards and policies vary from country to country and group to group. Some do rely on IFRS, others do not and some must rely on IFRS. As a result, there could be "*standard-shopping*" by placing a holding in a flexible-legislation jurisdiction. The consultation document rightly highlights that some or even considerable processing of consolidated statements will be required. One possibility to address such shortcomings might be thorough already existing tools, such as country-by-country reporting.

[6] Paragraph 98 of the OECD Pillar Two Consultation Document (November 2019)
[7] Blending is mixing of low-tax and high-tax income from different sources as set out in the GloBE proposals

From CFE's perspective, the use of different local accounting standards, which would move away from the level playing field that international stakeholders are aiming to achieve. The use of the financial accounts in a more general (global) context should be distinguished from the use of accounts as a starting point in a domestic system, which can have huge value in reducing compliance costs. Moving to an accounts basis for the purposes of establishing a consistent tax base across different jurisdictions would potentially lead to distortive risks and it is difficult to see how it would not add more complexity and uncertainty.

EU Law Compatibility Issues

There are a number of EU law compatibility points that are raised with the income inclusion rule. Primary EU law (fundamental freedoms) requires EU Member States to refrain from imposing additional taxes on the profits of an entity established in another Member State, unless the measures are limited in scope and target 'wholly artificial arrangements'.[8] Similarly, the tax on base eroding payments faces EU law challenges: denial of deduction by an EU Member State due to a lower tax rate in another Member State would be contrary to primary EU law (freedom of establishment and freedom to provide services in the Single Market).

The minimum tax rate, which is yet to be agreed, will also determine further compatibility issues with international obligations, including the EU fundamental freedoms.

Concluding Remarks

The proposals are likely to continue to put pressure on the existing tax framework, and any disparity in the domestic implementations of minimum tax rate proposals is inevitably going to lead to double taxation, in instances where countries fail to take into account tax already paid under such regimes (under CFC rules or under the GILTI regime in the United States). In addition, a practical problem exists where the assessment of the final tax may take several years. For example, if a taxpayer enters a provision in year one, there might be a final assessment, in years two, three or sometimes longer. Loss carry-back or carry–forward rules, or fiscal unity may further change the outcome. In addition, a layer of retaliatory taxation that could come further on changes the landscape even more. Such developments could occur in different financial years, which exposes the taxpayer to the risk of multiple taxation. Hence, the proposals appear like an equation with too many variables.

Furthermore, outcomes of a global minimum tax rate will differ significantly depending on the chosen model: jurisdiction-by-jurisdiction approach or an average global rate approach. The complexities in designing a minimum tax rate in a global context will be not only technically challenging but will require redoubling of political efforts by the Inclusive Framework governments to ensure close international coordination, prior and subsequently at implementation/ administration stage.

CFE considers that the final design of the GloBE proposals should reflect the following fundamental principles:

- Certainty for taxpayers and tax administrations,
- Simplicity and minimal compliance costs and complexities, and
- Absence of double or multiple taxation.

[8] Judgment of the Court of Justice of the European Union, Case C-196/04 *Cadbury Schweppes*, Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue

In addition, the risks exists of not taking into account certain permanent differences into the determination of the effective tax rate. For instance, to the extent the MNE could benefit from specific local tax incentives that allow to decrease significantly the tax rate (for instance patent box regimes, R&D incentives, tax credits etc.), these permanent differences should not be taken into account. Safeguards should be included to take into account differences due to which the effective tax rate is lowered as a result of measures/regimes that are accepted by the international community. Conversely, the new rules would likely threaten the entire systems of legitimate and genuine tax incentives that are introduced for benefit of real economic activity and investment.

Finally, it is questionable whether the present GloBE proposed solutions will solve the perceived problems, which centre on the public disquiet about multinational companies not paying enough tax. Other factors influence the amount of corporation taxes paid in a jurisdiction including the scope of the tax base, the statutory rates, any incentives etc. These solutions may address some of the problems that stakeholders have identified as arising from the taxation challenges of the digitalising economy, however, the issues of the perception of multinational companies not paying enough, or high enough rates of tax may persist. The complexity of our tax systems, nonetheless, may become even greater still.

CFE tax advisers europe

OPINION STATEMENT

Opinion Statement ECJ-TF 4/2019 on the CJEU decision of February 26, 2019, in Case C-135/17, *X-GmbH*, concerning the application of the German CFC legislation in relation to third countries

Prepared by the CFE ECJ Task Force
Submitted to the EU Institutions on 12 December 2019

The CFE Tax Advisers Europe note that the Court's decision in *X GmbH* constitutes a continuation of the Court's prior case-law regarding the meaning of the standstill clause. The CFE welcomes the clarification with regard to the question whether a restriction already existed on 31 December 1993.

The Court further develops its Cadbury Schweppes jurisprudence and illustrates how to interpret the terms "wholly artificial arrangements" in relation to the free movement of capital. The Court held that this concept has to be interpreted in a broader way in relation to third countries. It would be helpful if the Court gave further guidance in a future judgment on the meaning of "artificial transfer of profits".

***X GmbH* is likely also be relevant for the domestic legislation that implemented Articles 7 and 8 of the ATAD in that Member States will have to apply the "substance escape" also to third countries with an exchange of information clause.**

CFE Tax Advisers Europe is a Brussels-based umbrella association uniting 33 European national tax institutes and associations of tax advisers from 24 European countries. Founded in 1959, CFE represents more than 200,000 tax advisers. CFE Tax Advisers Europe is part of the European Union Transparency Register no. 3543183647-05. For further information regarding this opinion statement of the CFE ECJ Task Force please contact Prof. Dr. Georg Kofler, Chair of the CFE ECJ Task Force or Aleksandar Ivanovski, Tax Policy Manager at info@taxadviserseurope.org

This is an Opinion Statement prepared by the CFE ECJ Task Force[1] on Case C-135/17, *X GmbH*, in which the Court of Justice of the EU (Grand Chamber) (ECJ) delivered its judgment on 26 February 2019.[2] In general terms, the ECJ largely followed the opinion given by Advocate General Mengozzi on 5 December 2018.[3]

The case concerned the compatibility of the German CFC legislation with regard to third countries. In Germany, CFC legislation only applies in cross-border situations and not in purely domestic situations. In general, the application of CFC legislation requires that the shareholders have control over the foreign subsidiary, that the foreign subsidiary is lowly taxed and that it earns passive income. Concerning a special type of passive income there is even no control requirement needed. In relation to other EU and EEA countries Germany does not apply its CFC legislation if the taxpayer proves that the company carries on a genuine economic activity. However, this "Cadbury Schweppes-exception" does not apply in relation to third countries. The referring German Court asked whether the relevant German tax rules were compatible with the TFEU provisions on the free movement of capital. The first and second question concerned the interpretation of the standstill clause in Article 64(1) TFEU. With its third question the German Court inquires whether the Cadbury Schweppes jurisprudence can be transferred to the free movement of capital.[4]

The ECJ held that the standstill clause also applies if the scope of the domestic CFC legislation is extended after 31 December 1993 to shareholdings which do not involve direct investment. In addition, the Court stated that Member States cannot rely on the standstill clause if they change their legislation after 31 December 1993 and then later on replace these changes by legislation essentially identical to that applicable on 31 December 1993 unless these changes were never applied due to their repeal with retroactive effect. Concerning the interpretation of Article 63 TFEU, the ECJ transferred in substance its approach in *Cadbury Schweppes* (Case C-194/04) and held that the German CFC legislation does not infringe the free movement of capital unless the Member State of the shareholder is able to verify the accuracy of the information that the shareholding in the company is not the result of an artificial scheme.

I. Background and Issues

1. X GmbH is a German resident company which holds 30% of the shares of Y, a company resident in Switzerland. Y earned income from profit participation rights bought from another German company. X GmbH was subject to the German CFC legislation, which resulted in a pro-rata incorporation of Y's income into X GmbH's tax base. While the German CFC legislation, in general, requires control, low taxation and passive income, for a specific type of passive income ("Zwischeneinkünfte mit Kapitalanlagecharacter" – controlled company income from invested capital) the participation threshold is lowered to 1%. As the income from the profit participation rights fell within that specific category, the 30% participation was enough to trigger CFC legislation.

[1] Members of the Task Force are: Alfredo Garcia Prats, Werner Haslehner, Volker Heydt, Eric Kemmeren, Georg Kofler (Chair), Michael Lang, Jürgen Lüdicke, João Nogueira, Pasquale Pistone, Albert Rädler†, Stella Raventos-Calvo, Emmanuel Raingeard de la Blétière, Isabelle Richelle, Alexander Rust and Rupert Shiers. Although the Opinion Statement has been drafted by the ECJ Task Force, its content does not necessarily reflect the position of all members of the group.

[2] ECLI:EU:C:2019:136.

[3] ECLI:EU:C:2018:389.

[4] German Bundesfinanzhof of 12 October 2016, I R 80/14, IStR 2017, 316.

2. The German rules on CFC legislation have been significantly changed after 31 December 1993. First, the participation threshold regarding controlled company income from invested capital was lowered from 10% to 1%. Second, the Steuersenkungsgesetz 2000 (German Tax Reduction Act 2000) altered the whole concept of the CFC legislation. While in the past, the CFC legislation led to an anticipated dividend distribution the Steuersenkungsgesetz 2000 attributed the income earned by the CFC to the shareholder and subjected it to the German corporate tax rate. Later distributions from the CFC were then taxable at the reduced rate for dividends. The Steuersenkungsgesetz 2000 entered into force for the taxable year 2001.The effect of the attribution of the income of the CFC to the shareholder would have taken place only in 2002. However, the new CFC rules contained in the Steuersenkungsgesetz 2000 were repealed by the Unternehmenssteuerfortentwicklungsgesetz 2001 of 20 December 2001. The Unternehmenssteuerfortentwicklungsgesetz 2001 reestablished a CFC system similar to the one originally in force. As a consequence, the shareholders were never subject to the new system provided by the Steuersenkungsgesetz 2000.
3. X GmbH brought an action against the inclusion of the CFC income in the tax assessment, arguing that the profits earned by Y did not constitute income from invested capital. The Finanzgericht Baden-Württemberg dismissed the action and held that the application of the CFC legislation was correct as the profits earned by Y were correctly characterized as income from invested capital.[5] EU law issues were not raised at that level. X GmbH appealed the decision and claimed that the German CFC rules at issue violated the free movement of capital. The Bundesfinanzhof confirmed that the German CFC legislation was correctly applied, but it had doubts about the compatibility of the German rules with the free movement of capital. The Bundesfinanzhof stayed the proceeding and referred the following questions to the ECJ for a preliminary ruling:

> “(1) Is Article 57(1) EC (now Article 64(1) TFEU) to be interpreted as meaning that a restriction in a Member State which existed on 31 December 1993 in respect of the movement of capital to and from third countries involving direct investments is not affected by Article 56 EC (now Article 63 TFEU) if the national law in force at the relevant date restricting the movement of capital to and from third countries essentially applied only to direct investments, but was extended after that date to cover also portfolio holdings in foreign companies below the threshold of 10%?
>
> (2) If the first question is to be answered in the affirmative: Is Article 57(1) EC to be interpreted as meaning that a provision of national law restricting the movement of capital to or from third countries involving direct investments, existing on the relevant date of 31 December 1993, is to be regarded as applicable by reason of the fact that a later provision of national law that is essentially identical to the restriction in force at the relevant date is applicable, but where the restriction existing at the relevant date was substantially amended after that date and for a short period by legislation which formally entered into force but was in practice never applied due to the fact that it was replaced, before it could be applied to a specific case for the first time, by the provision that is now applicable?
>
> (3) If either of the first two questions is to be answered in the negative: Does Article 56 EC preclude legislation of a Member State under which the basis of assessment to tax of a taxable person resident in that Member State, which holds at least 1% of the shares in a company established in another State (in the present case, Switzerland), includes, pro-rata to the percentage of the shareholding, positive income obtained by that company from invested capital, where such income is taxed at a lower rate than in the Member State?”

[5] FG Baden-Württemberg, 6 K 2550/12 of 21 October 2014.

II. The Judgment of the Court of Justice

4. It started by analyzing the scope of the standstill clause contained in Art. 64 TFEU. The Court first had to deal with the question whether the standstill clause also applies to situations where a Member State extends the ambit of the CFC legislation – i.e. the restriction to the free movement of capital – after 31 December 1993 by lowering the participation threshold from 10% to 1%.

5. The ECJ confirmed its jurisprudence that a shareholding which confers the possibility of effectively participating in the management and control of the company could be regarded as a direct investment in the sense of Article 64 TFEU.[6] X GmbH had a shareholding of 30%, which the referring court classified as a direct investment, and the ECJ accepted this.[7]

6. According to the Court, the standstill clause not only covers situations where the national legislation exclusively restricts direct investments, but it also protects legislation restricting direct investments in situations where national legislation applies to both direct and portfolio investments.[8] The scope of the standstill clause does not depend on the specific purpose of the national legislation but on the effect of that restriction on the movement of capital.[9] The ECJ concluded that extension of the participation threshold from 10% to 1% after 31 December 1993 did not prejudice the application of the standstill clause of Article 64 TFEU to restrictions which already existed on 31 December 1993 provided that those restrictions concerned direct investments.[10]

7. The Court then turned to the second question asked by the Bundesfinanzhof. It had to analyze whether a fundamental change of the national rules after 31 December prevents the application of the standstill clause also in cases where that change is subsequently repealed and legislation essentially identical to the one before the change is reintroduced with retroactive effect.[11]

8. The ECJ referred to its settled case-law stating that changes to national legislation taking place after 31 December 1993 do not automatically exclude the application of the standstill clause. Restrictions adopted after 31 December 1993 can be treated as equivalent to existing restrictions if they are in essence identical to previous legislation or if they reduce or eliminate an obstacle to the free movement of capital.[12]

9. It is, however, necessary that the national provisions relating to the restriction in question have formed part of the legal order of the Member State continuously since 31 December 1993.[13] As a result, the standstill clause cannot be invoked with regard to provisions adopted by a Member State which reintroduce an obstacle to the free movement of capital that existed on or before 31 December 1993 but which was repealed after that date. In such cases, the restriction would not have existed continuously since 31 December 1993. The Court once again stressed that as the standstill clause constitutes a derogation from the fundamental principle of the free movement of capital, it must be interpreted strictly.[14]

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[6] *X GmbH* (C-135/17), para. 26.

[7] *X GmbH* (C-135/17), para. 29.

[8] The Court cites its jurisprudence in *X* (C-317/15), paras 21 and 22.

[9] *X GmbH* (C-135/17), para. 31.

[10] *X GmbH* (C-135/17), para. 33.

[11] *X GmbH* (C-135/17), para. 35 et seq.

[12] *X GmbH* (C-135/17), para. 37 referring to *Test Claimants in the FII Group Litigation* (C-446/04), paras 189 and 192; *Holböck* (C-157/05), para. 41 and *A* (C-101/05), para. 49.

[13] *X GmbH* (C-135/17), para. 38 referring to *A* (C-101/05), para. 48; *Prunus and Polonium* (C-384/09), para. 34 and *Secil* (C-464/14), para. 81.

[14] *X GmbH* (C-135/17), para. 43.

10. The ECJ went on to state that a repeal or amendment takes place at the day the repealing or amending legislation enters into force. However, a restriction must be regarded as having been maintained continuously where the applicability of the repealing or amending provisions are deferred under national law, and those provisions are themselves repealed before they ever become applicable.[15]
11. After this general explanation the Court drafted two different scenarios: If the Steuersenkungsgesetz 2000 was adopted together with provisions deferring the applicability of that law, so that the amendments to the CFC legislation were never applicable during the period between 1 January and 25 December 2001 when the Unternehmenssteuerfortentwicklungsgesetz 2001 entered into force, then it would be appropriate to consider that the old CFC legislation has been maintained since 31 December 1993 continuously. If, on the other hand, the Steuersenkungsgesetz 2000 became applicable as soon as it entered into force on 1 January 2001, then the restriction cannot be regarded as existing continuously since 31 December 1993. This would be the case if the entry into force of the Steuersenkungsgesetz 2000 meant that controlled-company income arising in 2001 was bound to be incorporated into the tax base of the shareholder, notwithstanding the fact that, as a result of the repeal of the Steuersenkungsgesetz 2000 on 25 December 2001, the tax authorities ultimately did not apply those rules in order to collect, in 2002, the tax on that income. It is for the Bundesfinanzhof to ascertain which of the two scenarios are met in this situation.[16]
12. As it is for the referring court to decide if the requirements of the standstill clause are fulfilled the ECJ went on to analyze whether the application of the German CFC legislation in relation to Switzerland constituted a violation of the free movement of capital enshrined in Article 63 TFEU.[17] As a taxpayer holding shares in a Swiss company earning income from invested capital was subject to CFC legislation while the same taxpayer holding shares in a similar German company was not subject to that legislation, the Court concluded that the German provisions form a restriction to the free movement of capital.
13. The Court went on to explain the meaning of Article 65(1)(a) TFEU which provides that "the provisions of Article 63 TFEU shall be without prejudice to the rights of Member State … to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested". That provision cannot be interpreted as meaning that all tax legislation which treats taxpayers differently based on their place of investment is automatically in line with the Treaty. According to the settled case-law of the Court such differences in treatment are only allowed when they concern situations which are not objectively comparable or when they are justified by an overriding reason in the general interest.[18]
14. Concerning the comparability, the Court held that as soon as a Member State taxes a resident company on the income obtained by a company established in a third country, in which the resident company holds shares, the situation of that resident company becomes comparable to that of a resident company which holds shares in another resident company.[19]
15. With regard to the justification, the ECJ cited its settled case-law that a justification requires that the measure is suitable for securing the attainment of the objective in question and that the measure does not go beyond what is necessary in order to obtain it.[20] The Court confirmed that the need to safeguard the balanced allocation of taxing rights, the need to prevent tax evasion and avoidance and the need

[15] *X GmbH* (C-135/17), para. 47.

[16] *X GmbH* (C-135/17), para. 47-51.

[17] *X GmbH* (C-135/17), para. 52-96.

[18] *X GmbH* (C-135/17), para. 61, referring to *Verkooijen* (C-35/98), para. 43; *Manninen* (C-319/02), para. 29; *Glaxo Wellcome* (C-182/08), para. 68.

[19] *X GmbH* (C-135/17), para. 68. This line of case law has a long history; see, e.g., *Saint Gobain* (C-307/97), para. 49.

[20] *X GmbH* (C-135/17), para. 70 referring to *Elisa* (C-451/05), paras 79 and 82; *DMC* (C-164/12/), para. 44; *Fidelity Fund* (C-480/16), para. 64.

to guarantee the effectiveness of fiscal supervision constitute overriding reasons in the public interest capable of justifying a restriction on the free movement of capital.[21]

16. As the German CFC legislation offsets the effects of any artificial transfer of income to low taxed third countries, it is, in principle, suitable for ensuring the attainment of the objectives it pursues.

17. The Court then analyzed the proportionality of the restriction and stated that the mere fact that a resident company holds shares in another company established in a third country cannot as such give rise to a general presumption of tax evasion and avoidance. A national measure restricting the free movement of capital may only be justified when it specifically targets conduct that consists of creating wholly artificial arrangements.[22] The Court referred to its Cadbury Schweppes judgment where it had assumed a "wholly artificial arrangement" to exist when the subsidiary was a fictitious establishment which did not carry out any genuine economic activity in the territory of the host Member State account being taken of the extent to which that company physically existed in terms of premises, staff and equipment.[23]

18. In the context of the free movement of capital, the term "wholly artificial arrangement" must be interpreted in a broader way. As regards cross-border movements of capital, the artificial creation of a scheme to escape taxation or to enjoy a tax advantage can take several forms. This includes situations where the taxpayer acquires shares in a company that does not pursue any economic activities of its own but also situations where a scheme has as its primary objective or one of its primary objectives the artificial transfer of the profits made by way of activities carried out in the territory of a Member State to third countries with a low tax rate.[24]

19. The Court then concluded that the German CFC legislation was not specifically designed to target artificial arrangements. It applied to all situations where the foreign corporation earned income from invested capital which was subject to a low tax and did not grant the taxpayer the opportunity to show that his shareholding was not the result of an artificial scheme. A low tax rate in combination with passive income can serve as an indication of conduct that might amount to tax evasion or avoidance, but they should not be employed as an irrebuttable presumption of an artificial scheme in all cases. As a result, as regards relationships between Member States, national legislation which wants to be proportionate must give the taxpayer an opportunity to provide evidence of any commercial justification that there may have been for the transaction at issue without subjecting him to undue administrative constraints.[25]

20. However, the ECJ reiterated its jurisprudence that the case-law concerning restrictions on the exercise of the fundamental freedoms within the European Union could not be transposed in its entirety to movements of capital between Member States and third countries since such movements take place in a different legal context.[26] In particular, a Member State must have to possibility to verify whether the evidence provided by the taxpayer is accurate and true. Where the legislation of a Member State makes entitlement to a tax advantage dependent on the satisfaction of conditions, compliance with which can be verified only by obtaining information from the competent authorities of a third country, it is, in principle, legitimate for that Member State to refuse to grant that advantage if, for example, that third country has no treaty obligation to provide information and it, therefore, proves impossible to obtain that information from that third country.[27]

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[21] *X GmbH* (C-135/17), paras 72-74.
[22] *X GmbH* (C-135/17), para. 80.
[23] *X GmbH* (C-135/17), para. 82 referring to *Cadbury Schweppes* (C-196/04), para. 67 et seq.
[24] *X GmbH* (C-135/17), para. 84.
[25] *X GmbH* (C-135/17), para. 87.
[26] *X GmbH* (C-135/17), para. 90 referring to *Établissements Rimbaud* (C-72/09), para. 40.
[27] *X GmbH* (C-135/17), para. 92

21. The ECJ concluded that it is for the referring court to examine whether the treaty provisions between Germany and Switzerland empower the German tax authorities to verify the accuracy of the information provided by the taxpayer. If such legal framework does not exist then the German CFC rules do not violate the free movement of capital. If such a legal framework, by contrast, exists the taxpayer must be given the opportunity to show his commercial reasons for the investment in Switzerland. Without granting such opportunity the German CFC rules violate Article 63 TFEU.

III. Comments

22. In many regards, X-GmbH confirms the prior jurisprudence of the ECJ. The judgment further illustrates the meaning of the standstill clause contained in Article 64 TFEU. Moreover, it gives additional guidance on the meaning of the term "wholly artificial arrangements" in the framework of the free movement of capital in relation to third countries.
23. With regard to the interpretation of the standstill clause, the Court has now clarified that extending the substantive scope of a restriction after 31 December 1993 to cover portfolio investment does not make the standstill clause inapplicable for investments that are otherwise qualified as direct.
24. The Court also had to deal with the question whether a substantial change after 31 December 1993 which was then retroactively repealed would lead to the inapplicability of Article 64. Granting this possibility would make it possible for Member States to reintroduce restrictions to the free movement of capital they had already abolished before. On the other hand, a change which had no effect as it was never applied should not jeopardize the application of Article 64 TFEU.
25. The ECJ found a worthy solution. It focused on the question whether the provisions which were later repealed were applicable after their entry into force. If the changes were repealed before they ever became applicable, a Member State could still rely on Article 64 TFEU. If, however, the changes became applicable after their entry into force meaning that the CFC income was bound to be incorporated into the tax base of the taxpayer, although he was never taxed on that income, then Article 64 TFEU can no longer be relied upon.
26. Following that guidance the Bundesfinanzhof came to the conclusion that the standstill clause cannot apply any longer.[28] As the income from invested capital had to be calculated as of 1 January 2001 the provision of the Steuersenkungsgesetz were actually "applied" so that the later repeal of that legislation could not undo the effects of that change.
27. Concerning the analysis of Article 63 TFEU, the Court follows its prior jurisprudence stating that a restricting measure in order to be compatible with the fundamental freedoms has to pursue an overriding goal in the general interest, that it must be capable of attaining that goal and that the measure must not go beyond what is necessary. As the German CFC legislation is not specifically targeted at fighting "wholly artificial arrangements" and does not grant the taxpayer the opportunity to prove commercial reasons, it would clearly be disproportionate under Cadbury Schweppes.[29]
28. The Court, however, further explained how to interpret the term "wholly artificial arrangements" in the context of the free movement of capital. It held that the concept has a broader meaning with regard to Article 63 TFEU. It not only includes the acquisition of shares in a company that does not pursue any economic activity, but also the artificial transfer of profits to a company in a low tax jurisdiction. Unfortunately, the Court does not further illustrate what it means with an artificial transfer. In general, a shareholder is free to decide whether he wants to finance a subsidiary with debt or equity. In addition,

[28] Bundesfinanzhof of 22 Mai 2019, I R 11/19, ECLI: DE: BFH:2019:U.220519:IR11.19.0. para 27.

[29] In our view, the notion of "commercial" as used by the Court extends well beyond a narrow understanding such as a trading activity, and would cover any economic reason, especially in the context of the free movement of capital.

companies are free to sell and acquire debt claims or other assets leading to the generation of passive income. It would have been interesting to know which link to the income and which amount of activity going on in the subsidiary the ECJ deems necessary in order to regard a transfer of profits as legitimate.

29. The ECJ also confirmed its prior jurisprudence that the free movement of capital between Member States and third countries take place in a different legal context and that, therefore, the jurisprudence concerning intra-EU situations cannot be transposed in its entirety to situations involving third countries. If a Member State cannot verify the information provided by the taxpayer it is not obliged to take that information into account. By contrast, if there is an exchange of information agreement in place, the taxpayer must be given the opportunity to show a commercial justification, even though the German rules did not provide the opportunity to rebut the presumption. The Court acknowledged that such exchange of information could take place "inter alia, by treaties".[30] Indeed, in earlier case law, the Court has accepted that an obligation for the non-Member State to provide information may follow from an exchange of information provision in a double taxation convention (e.g., a standard exchange of information provision along the lines of Article 26 OECD MC) or any other agreement (e.g., a Tax Information Exchange Agreement or the OECD/Council of Europe Multilateral Convention on Exchange of Information).[31]

30. In its follow-up judgment, the Bundesfinanzhof analyzed the tax treaty between Germany and Switzerland and concluded that it does not contain a so-called major information clause.[32] Switzerland was not obliged to provide information concerning the fulfilment of requirements contained in the domestic tax law of Germany. As Germany cannot verify the information provided by the taxpayer, the German CFC legislation does not violate the free movement of capital.

31. The last part of the X GmbH judgment might also have consequences for the implementation of Articles 7 and 8 of the Anti-Tax Avoidance Directive (ATAD). In our view, the Court's case-law suggests[33] that the three-prong test in Article 7(1)(a) ATAD, which not only relies on control-characteristics (i.e., more than 50% of capital ownership or voting rights), but alternatively also on a non-control characteristic (i.e. entitlement "to receive more than 50 percent of the profits of that entity"), generally opens up the rule for a freedom of capital movement inquiry. Moreover, Member States may go beyond the minimum standard set by the ATAD (Article 3 ATAD) and apply it generally also for non-controlling shareholdings, i.e., capital movements. In those situations it needs to be recalled that Article 7(2)(a) ATAD obliges Member States to introduce a Cadbury Schweppes-inspired "substance escape": The CFC rule shall not be applied if the taxpayer shows that the CFC "carries on a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances". However, the ATAD gives Member States the option not to apply this exception in relation to third countries. According to X GmbH, in the above situations it seems that Member States may no longer exercise that option (but rather apply the "substance escape") in relation to third countries if the other state has concluded a tax treaty with the Member State which contains an exchange of information clause. Member States will have to take the judgment into account when implementing Articles 7 and 8 ATAD.

[30] *X GmbH* (C-135/17), para. 95

[31] ECJ, 24 November 2016, Case C-464/14, *SECIL*, EU:C:2016:896, para. 64, referring to ECJ, 17 October 2013, Case C-181/12, *Welte*, EU:C:2013:662, para. 63.

[32] Bundesfinanzhof of 22 Mai 2019, I R 11/19, ECLI: DE: BFH:2019:U.220519:IR11.19.0, para. 34.

[33] See, e.g., *Itelcar* (C-282/12), para. 16 et seq.; *Emerging Markets Series* (C-190/12), para. 30; *Kronos International* (C-47/12), para. 37 et seq.; *SECIL* (C-464/14), para. 33.

IV. The Statement

32. The Court's decision in X GmbH constitutes a continuation of the Court's prior case-law regarding the meaning of the standstill clause. The CFE welcomes the clarification with regard to the question whether a restriction already existed on 31 December 1993.

33. The Court further developed its Cadbury Schweppes jurisprudence and illustrated how to interpret the terms "wholly artificial arrangements" in relation to the free movement of capital. The Court held that this concept has to be interpreted in a broader way in relation to third countries. It would be helpful if the Court gave further guidance in a future judgment on the meaning of "artificial transfer of profits".

34. X GmbH is likely also be relevant for the domestic legislation that implemented Articles 7 and 8 of the ATAD in that Member States will have to apply the "substance escape" also to third countries with an exchange of information clause.

CFE tax advisers europe

OPINION STATEMENT

Opinion Statement ECJ-TF 1/2020 on the General Court decisions of 24 September 2019, in Cases C-760/15 & T-636/16, *The Netherlands v. Commission (Starbucks)*, and Cases T-755/15 and T-759/15, *Luxembourg v. Commission (Fiat Finance and Trade)*, on State Aid granted by transfer pricing rulings

Prepared by the CFE ECJ Task Force
Submitted to the EU Institutions on 28 January 2020

The CFE Tax Advisers Europe note that these decisions are the first of a series of expected judgments concerning the legality of the EU Commission´s decisions considering as prohibited State Aid some transfer pricing rulings granted by Member States to Multinational Enterprises. The General Court reaches different verdicts. Whereas in Starbucks, it annulled the EC's decision, in Fiat it upholds, ordering Luxembourg to recover the aid.

Despite the different outcomes, the judgments have several commonalities as to how the General Court has interpreted the applicable European law on State Aids to tax matters. Therefore, they may provide an indication of how the Court will decide similar pending cases. In addition, the judgments are of paramount importance to understand: i) the role and limits of the Commission in reviewing rulings granted by Member States; ii) the role of the OECD's arm's length concept and of the OECD TP Guidelines in assessing the Treaty on the Functioning of the European Union prohibition of State Aid, and; iii) the level of evidence that has to be provided by the parties in these procedures. However, the importance of these two judgments should not yet be over-emphasised. Although the Commission has apparently decided not to appeal on *Starbucks*, the appellants in *Fiat Finance* will do so, thus asking for a final resolution by the Court of Justice of the European Union.

CFE Tax Advisers Europe is a Brussels-based umbrella association uniting 33 European national tax institutes and associations of tax advisers from 24 European countries. Founded in 1959, CFE represents more than 200,000 tax advisers. CFE Tax Advisers Europe is part of the European Union Transparency Register no. 3543183647-05. For further information regarding this opinion statement of the CFE ECJ Task Force please contact Prof. Dr. Georg Kofler, Chair of the CFE ECJ Task Force or Aleksandar Ivanovski, Tax Policy Manager at info@taxadviserseurope.org

This is an Opinion Statement prepared by the CFE ECJ Task Force[1] on Cases T-760/15 and T-636/16, *The Netherlands v. Commission (Starbucks)*[2] and on Cases T-755/15 and T-759/15 *Luxembourg v. Commission (Fiat Finance)*,[3] decided by the General Court (GC) on 24 September 2019.

These are just the first of a series of expected judgments concerning the legality of the EU Commission´s (hereinafter EC) decisions considering as prohibited State Aid some transfer pricing (hereinafter TP) rulings granted by Member States to Multinational Enterprises (hereinafter MNEs)[4].

The GC reaches different verdicts. Whereas in *Starbucks*, it annulled the EC's decision, in *Fiat* it upholds, ordering Luxembourg to recover the aid. Despite the different outcomes, the judgments have several commonalities as to how the GC has interpreted the applicable European law on State Aids to tax matters. Therefore, they may provide an indication of how the GC will decide similar pending cases. In addition, the judgments are of paramount importance to understand: i) the role and limits of the Commission in reviewing rulings granted by Member States (hereinafter MS); ii) the role of the OECD's arm's length concept and of the OECD TP Guidelines in assessing the Treaty on the Functioning of the European Union (TFEU) prohibition of State Aid, and; iii) the level of evidence that has to be provided by the parties in these procedures.

The importance of these two judgments should not yet be over-emphasised. Although the Commission has apparently decided not to appeal on Starbucks, the appellants in Fiat Finance will do so, thus asking for a final resolution by the Court of Justice of the European Union (ECJ). The latter is not bound to follow the GC and may decide the matter on points on law in a way that deprives the current judgments of their jurisprudential value.[5] That being the case, the GC conversely would have to follow the ECJ's reasoning in future decisions as to the interpretation of EU law on State Aid.

In the meantime, however, these GC judgments are the best guidelines that MNEs and Member States have (and will have in the near future) as concerns the admissibility of their TP rulings in light of the EU State Aid rules.

Given the length of the two judgments and amount of covered topics, this statement will only focus on issues considered of interest for understanding the GC's reasoning and impact.

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Unlike the usual format of the Opinion Statements (OS) of the CFE ECJ Task force, this Statement does not address the issue on the basis of a single decision but rather by taking into account the first two decisions of the General Court (GC) regarding a long series of final decisions by the EU Commission considering that rulings granted by certain EU Member States to their residents (MNEs) on transfer pricing issues were prohibited State Aid.

[2] ECLI:EU:T:2019:669.

[3] ECLI:EU:T:2019:670.

[4] There was an earlier judgment of 14 February 2019 on a similar topic, *Magnetrol International and Belgium vs Commission*, Joined Cases T-131/16 and 263/16, ECLI:EU:T:2019:91. However, the GC dismissed the case the EC had failed to provide evidence that all situations covered by the Belgium "excess profit tax" regime would lead necessarily to a benefit. The judgment of the GC was appealed and is now pending before the Court of Justice as C-337/19.

[5] In the past there have been other occasions of divergent opinions between the CJEU and the GC, including on State Aid in tax matters, such as in the Gibraltar judgments (on which see GC, 18 December 2008, Joined Cases T-211/04 and T 215/04, ECLI:EU:T:2008:595 and CJEU, 15 November 2011, Joined Cases C-106/09 P and 107/09 P, ECLI:EU:C:2011:732.

I. Background and judgment of the GC

I.1 Starbucks

I.1.1 Issues

1. The GC was asked to annul an EC decision on an Advance Pricing Agreement (hereinafter APA) granted by the Netherlands to Starbucks Manufacturing EMEA BV (hereinafter SMBV), a Dutch subsidiary of the Starbucks corporation (US), which was indirectly controlled through a subsidiary, Alki, a tax resident of the UK.
2. SMBV was basically a manufacturer, buying beans and roasting coffee and distributing it alongside with related products to Starbuck shops in Europe, the Middle East and Africa.[6] It concluded a roasting agreement with Alki by which it obtained the use of the intellectual property needed for the roasting and distributing coffee, in exchange for the payment of royalties.
3. In 2008, SMBV and The Netherlands concluded an APA for the determination of SBMV's taxable base, with a duration of 10 years. It established that: i) the method for determining the base would be the transactional net margin method (hereinafter TNMM),[7] by reference to a certain percentage of the operating costs[8]; ii) the amount allowed to be deducted as royalty paid to Alki was computed as the difference between the SMBV's total revenue on the one hand, and SMBV's cost base increased by SMBV's remuneration (taxable base), on the other.[9]
4. In 2015, the EC decided that the APA amounted to State Aid, and ordered the recovery of corresponding aid.[10] The core of the discussion was on the requirement of selectivity. The EC followed the traditional three-step analysis to determine whether the measure was selective: i) reference system; ii) derogation; iii) valid justification.[11]
5. The reference system was the general corporate tax system of the Netherlands, which had the objective of taxing all companies subject to tax in the Netherlands. This meant that integrated and standalone companies "were in a comparable legal and factual situation, in the light of that objective and were therefore subject to corporate income tax without distinction".[12]
6. The measure (APA) would deviate from the reference system in so far as it was "a tax measure which results in an integrated company charging prices that did not reflect those which would have been charged in conditions of free competition, that is prices negotiated by independent undertakings negotiated under comparable circumstances at arm´s length" and that "conferred an advantage on that group company in so far as it resulted in a reduction of its taxable base and thus its tax liability under the ordinary corporate income tax system".[13] Thus, the EC had to "verify whether the methodology accepted by the Netherlands tax administration via the APA for the purposes of determining SMBV´s taxable profits in the Netherlands departed from a methodology that result[s] in a reliable approximation of a market-based outcome and, therefore, from the arm's length principle"[14]. The EC

[6] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 14.

[7] The ruling referred to "cost-plus" but in practice, as the GC concluded, the APA was in practice applying TNMM) - *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 187.

[8] Which excluded a significant part of the effective costs such as the cost of the green beans, the costs of the cups, napkins and similar and the logistics and distribution ensured by third parties or the royalties – *The Netherlands v. Commission* (T-760/15 & T-636/16), at para. 15.

[9] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 188.

[10] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 19.

[11] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 34.

[12] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 36.

[13] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 38.

[14] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 38. The expression "eliable approximation of a market-based outcome" is likely the most repeated expression on both judgments. See *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 38, 46, 50, 53, 54,

considered that the "arm's length principle necessarily formed an integral part of its assessment, under Art. 107(1) TFEU, of the tax measures granted to integrated companies, independently of whether a Member State had incorporated that principle into its national legal system".[15]

7. Following this reasoning, the EC concluded that there was prohibited State Aid and ordered the recovery of the "difference between the tax that should have been paid on the basis of that price and the amount actually paid under the APA".[16]

I.1.2 Judgment

8. The Court decided to "annul the contested decision in its entirety".[17]
9. For the purposes of this OS, we find it useful to focus on the following two issues analysed by the GC judgment, namely i) the infringement of the MSs fiscal autonomy; ii) the existence of prohibited State Aid granted through the APA.

I.1.2.1 Infringement of the MS's fiscal autonomy

10. The GC considered that the examination in the light of the arm's length principle specific to the EU forms part of its analysis of the selective advantage.[18] And, "[w]hen national tax law does not make a distinction between integrated undertakings and standalone undertakings for the purposes of their liability to corporate income tax, that tax law is intended to tax the profits arising from the economic activity of such integrated undertaking as though it had arisen from transactions carried out at market prices".[19] Furthermore, Art. 107(1) TFEU, "allows the Commission to check whether that pricing corresponds to pricing under market conditions".[20]
11. Arm's length is described as a "useful tool"[21], a "benchmark"[22] and a "methodology"[23] to check whether the taxable profit of an integrated undertaking pursuant to a tax measure corresponds to a reliable approximation of a taxable profit generated under market conditions".[24]
12. As for the OECD TP Guidelines, they do not bind the EC but are not deprived of relevance as they have a "practical significance in the interpretation of issues relating to transfer pricing" given that they i) "are based on important work carried out by groups of renowned experts"[25], and; ii) "reflect the international consensus achieved with regard to transfer pricing"[26].
13. As concerns the legal basis for the arm's length, the GC followed the Commission's reasoning that the arm's length principle: i) necessarily formed an integral part of the examination, under Art. 107(1) TFEU, of tax measures granted to group companies", and that; ii) was "a general principle of equal treatment in taxation, which fell within the application of Art. 107 TFEU"[27].

57, 140, 152, 196, 199. 201. 202. 212, 213, 395, 416, 418, 425, 428, 474, 512, 532 and 555. and *Luxembourg v. Commission* (T-755/15 & T-759/15), paras. 25, 43, 121, 132, 176, 204, 207 and 412.

[15] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 38.

[16] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 64.

[17] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 561.

[18] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 137.

[19] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 149.

[20] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 151.

[21] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 151, 152, 157, 163, 169 and 199. In the French language version the GC uses the expression "un outil permettant d'effectuer cette verification".

[22] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 151.

[23] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 152, 154, 196.

[24] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 152.

[25] The French language version mentions only "experts".

[26] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 155.

[27] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 139 (for the position of the EC), 162 and 168. This would not be a "general principle of equal treatment" but merely "a tool enabling [the Commission] to check that intra-group transactions are remunerated as though they had been negotiated between independent companies".

14. The GC recognised that arm's length does not lead to a precise result and that, as a consequence, there would be an advantage "only if the variation between the two comparables goes beyond the inaccuracies inherent in the methodology used to obtain that approximation".[28]

I.1.2.2 Aid granted through an APA

15. As concerns the amount that could be deducted as royalties paid to Alki, the GC considered that: i) a methodological error in the application of the arm's length was not sufficient to prove that there was a non-market based outcome[29]; ii) the EC provided no evidence that the comparable uncontrolled price (hereinafter CUP) method should have priority over the TNMM or that the latter "necessarily leads to a result that is too low".[30] Furthermore, it considered that the EC failed to provide reasons why the amount of royalties paid to Alki should have been zero.
16. Concerning the acquisition of green beans, the GC concluded that the EC failed to provide evidence that the method used for determining the price paid was part of the APA or, if this was the case, that it represented an advantage.[31]
17. The GC considered that the EC had failed to provide evidence why choosing the SMBV as the tested party for the purposes of the application of the TNMM led to a reduction of the taxable profit and dismissed the claim. It also stated that the EC had failed to show that eventual methodological errors in the determination of the functions and SMBV's profits (namely the choice of profit level indicator and the choice of adjustments) lead to an advantage as it would not be a reliable approximation of a market-based outcome.

I.2 Fiat Finance and Trade

I.2.1 Issues

18. The case concerned a ruling granted by Luxembourg to Fiat Chrysler Finance Europe, formerly Fiat Finance and Trade (hereinafter FFT), a Luxembourg subsidiary of the FIAT/Chrysler group. FFT provided treasury services and financing to the group (except for those located in Italy).
19. In 2012, Luxembourg granted FFT a ruling with a duration of five years. This ruling established that: i) the taxable base for the intra-group activity could be set using the TNMM; ii) when applying such method, FFT could segment its equity capital. Accordingly, its taxable base would be composed by two amounts: i) "a 'risk remuneration', calculated by multiplying FFT's hypothetical regulatory capital of EUR 28,500,000 estimated by applying the Basel II framework by analogy, by the pre-tax expected return of 6.05%, estimated using the Capital Asset Pricing Model ('CAPM')"; ii) "a 'functions remuneration', calculated by multiplying what is designated as FFT's capital used to perform the functions, estimated as EUR 93,710,000, by the market interest rate applied to short-term deposits, estimated to be 0.87%"[32].
20. In October 2015, the EC decided that the ruling amounted to State Aid[33] and ordered the recovery of the corresponding aid.
21. The Commission followed the three-step analysis and a reasoning quite similar to the one described previously.[34] It all boiled down to determining whether the ruling "departed from a methodology that

[28] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras 152 and 427.
[29] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 204 and 205.
[30] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 212.
[31] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 374 et seq and particularly 380.
[32] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 11.
[33] Commission Decision of 21 October 2015 SA.86375 (2014/Cex2014/NN), C(2015) 7152 final.
[34] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 22, 23 and 24.

led to a reliable approximation of a market-based outcome and, thus, from the arm's length principle".[35] The EC considered that this was not the case because: i) first, and for the purposes of applying TNMM, the ruling should have opted for the accounting equity (capital) instead of the hypothetical regulatory capital; ii) second, because the hypothetical regulatory capital was underestimated; iii) third, because several deductions from FFT's remaining capital shouldn't have been allowed; iv) fourth, because "the choice of a beta of 0.29 when using the CAPM to determine the return on capital to be applied to FFT's hypothetical regulatory capital resulted in a profit allocation to FFT that was not in line with the arm's length principle".[36]

I.2.2 Judgment

22. Unlike in the Starbucks case, the GC dismissed the request for annulment of the Commission's decision.
23. For the purposes of this OS, we find it useful to focus on the two following arguments analysed by GC in this case, namely i) tax harmonisation in disguise; ii) existence of prohibited State Aid.

I.2.2.1 Tax harmonisation in disguise

24. As in Starbucks, the GC concluded that "Article 107(1) TFEU allows the Commission to check whether the pricing of intra-group transactions, accepted by the national authorities for determining the taxable base of an integrated undertaking, corresponds to prices that would have been charged at arm´s length".[37]
25. There are, however, a couple of additional clarifications. First, the GC rejects FFT's claim that "the Commission's position on the arm's length principle departed from its previous practice in taking decisions", since "that practice in other cases cannot affect the validity of a contested decision, which can be assessed only in the light of the objective rules of the FEU treaty".[38] Second, it rejected FFT's claim that the arm's length principle used by the Commission differed from the OECD one, namely because it did not allow for appropriate adjustments.[39] The GC noted that the OECD Transfer Pricing Guidelines do not bind the EC, that the EC had not ruled out the possibility of making adjustments[40] and that FFT had not provided evidence why the exclusion of adjustments would turn the arm's length principle used by the Commission into an incorrect method.[41] Third, the EC's decision did not infringe legal certainty[42] and legitimate expectations.[43]

I.2.2.2 Existence of State Aid

26. Luxembourg claimed that there was no advantage and rebutted the (five) methodologic errors identified by the Commission regarding the amount of capital to be remunerated (namely the profit level indicator) and the rate of return of that capital.
27. In this case, the GC focused on the segmentation of the capital. It considered that, in the application of the TNMM, all equity capital should have been considered since i) capital is, by nature, fungible;[44] ii) segmentation is neither authorised nor prohibited, and thus, needs to be tested;[45] iii) "the total capital

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[35] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 25.
[36] *Luxembourg v. Commission* (T-755/15 & T-759/15), paras. 28-31.
[37] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 157.
[38] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 170.
[39] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 172.
[40] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 173.
[41] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 175.
[42] *Luxembourg v. Commission* (T-755/15 & T-759/15), paras. 180-184.
[43] *Luxembourg v. Commission* (T-755/15 & T-759/15), paras. 185-186.
[44] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 223.
[45] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 229.

is exposed to risk and is available to support FFT's solvency";[46] iv) the total capital is considered by the borrowers;[47] v) the segmentation is artificial, inappropriate, and does not correspond to the functions performed.[48] This allowed concluding that the ruling led to a non-market based outcome, regardless of any further considerations on the return rate on the capital.

28. The EC claimed that the beneficiary of the aid was the FIAT/Chrysler group as a whole "in so far as FFT formed an economic unit with the other entities within the group and that those entities had benefited from the tax reduction granted to FFT, given that the tax reduction necessarily had the effect of reducing the pricing conditions of its intra-group loans".[49] The GC accepted that conclusion.[50]

29. The GC rejected to take into account any possible neutralisation of the aid in other MS. First, because the lower taxes in Luxembourg were not lowered by higher taxes in another Member State. Second, because, even if that was the case, neutralisation would not alter the fact that the group obtained a benefit in Luxembourg.[51]

30. The GC dismissed Luxembourg's and FFT's claim that there was no selectivity since the measure had to be examined by reference to Luxembourg law and practice. And, as no justification had been put forward to support the deviation,[52] the derogation would amount to State Aid.

II. Comments

II.1 Introduction

31. As mentioned, this Opinion Statement will not focus on case-specific issues. The goal is to focus on critical issues in the GC's reasoning, highlighting its impact on the development of EU law in this area and the impact that it may have for MS and businesses throughout the EU.

II.2 Application of the selectivity test

32. In both cases, the discussion was focused on the existence of a selective advantage. The GC followed the traditional three-step analysis test to assess selectivity considering: i) the reference system; ii) a derogation; iii) justifications for the derogation.

II.2.1 Reference system

33. According to settled case-law, the reference system is the tax regime that a Member State would normally apply to the beneficiary of the measure. The GC accepted the EC's view that the reference system would not be the applicable domestic law provisions, but the "object" of the CIT system, which was to tax all the profit of integrated and standalone companies. This seems to be in line with the position already adopted by the Court in *Gibraltar*[53] and *World Duty Free*.[54]

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[46] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 238.
[47] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 241.
[48] *Luxembourg v. Commission* (T-755/15 & T-759/15), paras. 242, 246 and 250.
[49] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 38.
[50] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 316.
[51] *Luxembourg v. Commission* (T-755/15 & T-759/15), paras. 316-318.
[52] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 363.
[53] Judgment of 15 November 2011, *Commission and Spain / Government of Gibraltar and United Kingdom* (C-106/09 P and C-107/09 P, ECR 2011 p. I-11113) ECLI:EU:C:2011:732, para. 75.
[54] Judgment of 21 December 2016, *Commission / World Duty Free Group* (C-20/15 P and C-21/15 P) ECLI:EU:C:2016:981, para 31, 54, 57, 58 and 60.

II.2.2 Derogation

34. In the second place, one needs to assess if the measure derogates from the reference system, differentiating "between economic operators who, in the light of the objectives intrinsic to the reference system, are in a comparable legal and factual situation".[55] For the GC, the EC provided enough evidence of this derogation.

II.2.3. Justification

35. The selectivity exam requires the assessment of justifications, i.e. domestic reasons that would have a dimension of weight that would be higher than the EU interest underlying Art. 107(1) TFEU. The GC dismissed any examination on the basis of the burden of proof, noting that nothing had been alleged by the appellants.

II.3 The arm's length inherent to Art. 107(1) TFEU

II.3.1. Legal basis for the EU arm's length principle: arm's length as a corollary of the State Aid prohibition

36. Both GC judgments are based on the fundamental premise that insofar as domestic law does not distinguish between standalone and integrated companies, arm's length may be used in the review pursuant Art. 107(1) TFEU.[56] This line of reasoning endorses the view of the EC based on the arguments accepted by CJEU in the Forum 187 case.[57] The GC did not object to the EC's view that "the arm's length principle necessarily [forms part of the] assessment, under Art. 107 TFEU, of tax measures granted to group companies, irrespective of whether the Member State had incorporated that principle into its national legal system".[58] These assumptions allow the EC to go beyond the intricacies of domestic TP law and to create a common framework for the review of the rulings based on the general CIT principle of taxation of market income. Arm's length, as an approximation of this market-income between associated enterprises, therefore, appears as a (new) limit to a State's sovereignty in direct tax matters.
37. However, this premise may not be accurate for the following reasons:

    a) Art. 107(1) TFEU is part of the competition agenda of the Treaty and prohibits MS from granting selective aid to undertakings. It aims to ensure free competition and, consequently, economic efficiency within the internal market.

    b) Art. 107(1) TFEU does not indicate how states should treat undertakings. It merely restricts states to grant selective aid insofar as it distorts competition. It does not allow the extraction of substantive rules on how states have to treat their undertakings.

    c) Art. 107(1) TFEU, a fortiori, is not part of the tax agenda of the Treaty and does not set rules on how MS shall tax undertakings subject to its tax jurisdiction. It merely prohibits them from using the tax system to grant illegal or unlawful State Aid.

    d) A potential harm to legal certainty may arise insofar as one extracts a principle and uses it for judicial review particularly when such principle has no support in the case law (or even legal doctrine) at the moment the ruling was granted.

    e) There is a certain petitio principii in the following GC's reasoning: i) arm's length is part of the EC's assessment, and thus it applies regardless of any domestic law provisions; ii) nonetheless, the definition

[55] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 34 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 22.
[56] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 141 and *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 137.
[57] *CJEU, 22 June 2006, Joined Cases C-182/03 and 217/03, Forum 187 ASBL*.
[58] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 139 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 26, 131.

of the reference system requires taking into consideration the purpose of the domestic CIT system, and the conclusion that "that law is intended to tax the profit arising from the economic activity of such an integrated undertaking as though it had arisen from transactions carried out at market prices"[59]; iii) finally, and even if domestic TP systems were considered for the definition of the system of reference, they are not taken into account as sources of the content of the EU arm's length tool.

38. The GC may appear to assume that the arm's length pricing leads to a "reliable approximation of a market-based outcome" or "market prices"[60]. This assumption would not be entirely correct for the following reasons:

a) The starting point of any transfer pricing system is to annul the pricing effects derived from conditions imposed by one group member to another; in a cross-border scenario, this prevents, for example, using intra-group pricing to increase profits in lower-taxed jurisdictions while correspondingly decreasing profits in higher taxed jurisdictions.

b) However, arm's length does not necessarily lead to an approximation of market conditions. As the OECD points out "the relationship among members of an MNE group may permit the group members to establish special conditions in their intra-group relations that differ from those that would have been established had the group members been acting as independent enterprises operating in open markets."[61] Thus, the standard takes into account situations that not might not be present between independent enterprises.

c) Moreover, "in making these comparisons [with standalone entities or transactions], material differences between the compared transactions or enterprises should be taken into account. In order to establish the degree of actual comparability and then to make appropriate adjustments to establish arm's length conditions (or a range thereof), it is necessary to compare attributes of the transactions or enterprises that would affect conditions in arm's length transactions." [62]

d) The arm's length result takes into account the differences between standalone and integrated companies, namely through the introduction of adjustments. Thus, as the entities or transactions are not operating similarly as independent enterprises, the arm's length will produce neither "market prices" nor even reliable approximations of market-based outcomes (within the limits of a reasonable interpretation of this expression).

e) The residual profit may be seen as additional evidence of the previous argument. In the profit-split method, after allocating profit to each group member according to what the market would remunerate independent companies operating similar transactions, there is still usually a residual profit that has to be allocated taking into account facts and circumstances. This residual profit is often the result of group-specific realities such as synergies, economies of scale or benefits of integration between integrated companies that would generally not occur between standalone companies; allocation of the residual profit cannot be seen as a situation that would occur between standalone companies.

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[59] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 141.

[60] The EC states that "arm's length principle consisted in the notion that transactions between intra-group companies were to be remunerated as if they had been agreed to by standalone companies negotiating under conditions of free competition" - *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 38.

[61] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, (OECD), Primary Sources IBFD, para. 6 of the preface.

[62] OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, (OECD), Primary Sources IBFD, para. 1.36.

II.3.2 Nature of the arm's length approach

39. The CG describes arm's length as a "tool"[63], a "benchmark"[64] and a "methodology"[65]. From a legal theory perspective, this lack of a precise characterisation leaves room for uncertainty on how arm's length can be interpreted and applied and whether interpretation and application can follow the same rules that domestic courts have been following until now.

II.3.3 Value of the OECD TP Guidelines

40. The GC starting point is that the "tool" it is using is specific, and distinct from Art. 9 of the OECD MC[66] and, a fortiori, of the OECD TP Guidelines. The GC clarified that the Guidelines do not bind the EC. However, the Guidelines have a certain "practical significance in the interpretation of issues relating to transfer pricing" since they i) "are based on important work carried out by groups of renowned experts", and; ii) "reflect the international consensus achieved with regard to transfer pricing"[67]. In our view, it would have been better if the CG could have been more precise in this respect.

41. The OECD TP Guidelines are recommendations of the OECD Council[68], addressed to OECD members without binding them. A fortiori, the Guidelines per se do not bind private parties. Domestic transfer pricing rules may refer directly to the Guidelines (case in which the Guidelines will have the value that is conferred by domestic law) or the legal system may consider them as relevant sources of interpretation, as the orientations that were taken into account by the States when designing their domestic TP rules. However, the fact is, without intermediation by the domestic legislature, the Guidelines are deprived of any binding legal value.

42. This reasoning cannot be transposed immediately into the EU context. First, because not all EU MS are OECD members.[69] Second, because the EU is not an OECD member and thus, its recommendations have not even the value of recommendations.[70] Third, because there is no EU legal act attributing value to the OECD TP Guidelines. Fourth, because it cannot be said that the EU's arm's length used for the EC's review under Art. 107(1) TFEU was built on the basis of the elaborated and precise OECD TP Guidelines. Art. 107(1) TFEU maintains the same wording since 1957 and the Guidelines were issued by the OECD much later.

43. It is quite difficult to acknowledge legal status of the OECD TP Guidelines for the purposes of State Aid investigations, taking simultaneously into account that i) arm's length is specific; ii) EU primary law has no reasonable link with the OECD TP Guidelines, and; iii) secondary EU law does not remit to them (neither directly nor indirectly).

44. Finally, even if one ignored the above issue, one is still faced with the question of knowing which version of the Guidelines should be taken into account: i) the existing version at the moment when the domestic measure is adopted, or; ii) the existing version at the moment the EC decision is taken or that the court's judgment takes place. In *The Netherlands v. Commission*, the GC acknowledges that the EC used the

[63] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 151, 152, 157, 163, 169 and 199 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 130, 143, 144, 151, 155, 159, 162, 207.

[64] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 151 and *Luxembourg v. Commission* (T-755/15 & T-759/15), paras. 143 and 296.

[65] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 152, 154, 196 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 132, 146, 420, 427.

[66] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 161 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 149.

[67] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 155 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 147 and 176.

[68] Art. 5(b) of the Convention on the Organization for Economic Co-operation and Development of 14 December 1960, available at: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280110c0a&clang=_en.

[69] At present Bulgaria, Croatia, Cyprus, Malta and Romania are not OECD Member countries.

[70] Based on Art. 220 TFEU and in conformity with the Supplementary Protocol No. 1 to the OECD Convention, the European Commission has a special status before the OECD. Such status allows for its involvement in various aspects of the work of the OECD through a representative that does not have the right to vote and does not officially take part in the adoption of legal acts submitted to the OECD Council.

1995 and 2010 version of the OECD TP Guidelines[71] and did not seem to censor the use of a later version. In our view, and taking into consideration the GC's view as concerns the burden of proof (as mentioned infra) it seems reasonable to consider that only the version that was known at the moment the domestic measure was adopted should be taken into account when a ruling is assessed on the basis of Art. 107(1) TFEU.

II.3.4 Content of the EU arm's length "benchmark"

45. Another question regards the exact content of that "benchmark".

46. The starting point is the recognition: i) that EU law (neither primary nor secondary law) provides no indication about its content; ii) domestic TP rules are not decisive to set meaning; iii) OECD TP Guidelines are not, by themselves, binding. In terms of logical reasoning, full consideration of these premises creates issues in terms of legal certainty as one needs to extract very specific authorisations and prohibitions (e.g. adjustments) from a very general principle.

47. Adding to the complexity, the EC introduces another variable which is accepted by the Court: namely the functional or teleological control of the validity of the (OECD or domestic) TP rules, which are only considered valid if they lead to a "reliable approximation of a market-based outcome".

48. This complexity is exacerbated by the fact that the GC avoids defining or providing criteria on what is a "reliable approximation of a market-based outcome". This leaves the interpreter with a new (validity) test for which no criteria are provided.

49. Against this background, and adding to the already existing uncertainty in the TP area, a new issue emerges: what are the domestic or OECD rules that lead to a "reliable approximation of a market-based outcome"? Which paragraphs/articles can be relied upon and which paragraphs/articles shall be dismissed? Taking into account the primacy and direct effect of EU law, shall undertakings and tax authorities start to ignore provisions of their domestic TP rules on the consideration that they do not lead to a reliable approximation of a market-based outcome? And what evidence would they have to gather to substantiate their position? Are there market-based methods and non-market based methods?

50. This raises even more fundamental questions. As we know, transfer pricing works by approximation, and the use of the OECD methodologies typically leads to a range of results that are found in transactions between independent enterprises (the arm's length range). Taking into account the GC judgments, can undertakings even rely on the domestic rules or TP Guidelines, knowing that if they are strictly followed, the outcome will always be a "reliable approximation of a market-based outcome"? Or shall it always introduce a final rationality test, assessing if the arm's length range (or parts of it) are a market-based outcome (introducing a new layer in the TP analysis within the EU)? In other words, does it suffice to comply with domestic rules and OECD TP Guidelines or, in addition, shall undertakings introduce a final "approximation of a market-based" test? And, in the latter scenario, what do they need to test? Should the EC start a program on identifying which rules lead to a reliable approximations of a market-based outcome or which results are a sufficient approximation of market-based outcomes?

II.4 Admissibility of TNMM

51. In both cases, the GC accepts the Transactional Net Margin Method (TNMM) for the determination of the taxable base. This is one of the methods suggested by the OECD Transfer Pricing Guidelines and a method that is frequently used in the practice of transfer pricing throughout Europe.

52. TNMM departs from the comparison between the net profit margin of an undertaking obtained from non-arm's length transaction and the net profit margin of undertakings operating at arm's length from

[71] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 256.

similar transactions. It then determines the net profit margin by reference to a profit level indicator such as costs, sales or assets. In order words, it takes into account the relationship between the net profit of standalone companies and a profit indicator and extrapolates the profit method that members of integrated companies would have. The determination of the profit indicator and of the margin depends on the facts and circumstances of the case.

53. TNMM is, in most jurisdictions, a subsidiary method. Whenever the information available allows for the application of more direct methods (such as CUP, cost-plus or resale-minus), said methods should be applied. The underlying assumption is that the results obtained by the use of those methods would be more accurate.

54. The GC did not attribute too much relevance to the method chosen or even to its subsidiarity. In its view, "choosing the transfer pricing method is not an end in itself, but is done with a view to the intra-group transaction for which the arm's length method level must be determined, and not the other way around".[72]

55. In our view, the GC was not directly asked about the admissibility of TNMM or whether it is able to lead to a reliable approximation of a market-based outcome. The GC acknowledges that the EC accepts the application of the method and focuses on the methodologic errors in its application, as identified by the EC. It should be noted, however, that one-sided methods such as the TNMM might inherently lead to double non-taxation, an issue that was not addressed either by the EC or by the Court.

II.5 Evidence / Burden of proof

56. In both judgments, the GC makes an effort to clarify the burden of each of the parties. According to the GC: i) the Commission has to provide evidence of the existence of aid, and; ii) the Member State has to provide evidence of justifications for the different treatment between undertakings.[73] The GC merely reiterates its long-standing position in this issue, which is based on the general principles for the distribution of the burden of proof.

57. The GC clarifies that evidence is only allowed insofar as it pre-dates the action that led to the aid. [74] One has to "place oneself in the context of the period during which the measures at issue were taken in order to assess the economic rationality of the conduct of the Member State".[75]

58. In transfer pricing cases, the GC recognises that Member States benefit from a certain "margin of appreciation in the approval of transfer pricing"[76] which, however, does not prevent the EC to check "whether the transfer pricing accepted by a Member State corresponds to a reliable approximation of a market-based outcome and whether any variation that may be identified in the course of that examination does not go beyond the inaccuracies inherent in the methodology used to obtain that approximation".[77] This substantially increases the burden to be met by the EC, which not only has to provide evidence of aid (in this case, a deviation from the reference framework) but also that this deviation goes "beyond the inaccuracies inherent in the methodology". In future cases, the GC will likely be asked to clarify if the "inherent inaccuracies" refer to i) the precise pricing within the quartiles; ii) tolerable differences in the selection of the elements on which each method relies (comparables, profit indicator); iii) the fact that no transfer pricing methodology will ever lead to a precise market-based outcome since any method takes into account the relationship between the parties and that there are

[72] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 209.

[73] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 194 and 195 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para 202 and 203.

[74] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 243.

[75] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 244.

[76] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 196.

[77] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 196 and *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 207.

no criteria on what is considered a reliable approximation of that market-based outcome. At this point, the GC's judgment leads to uncertainty and may give rise to unnecessary litigation.

59. The GC does not go so far as to require the EC to provide evidence of the right pricing or of the methodology that would lead to a reliable approximation of a market-based outcome. This is made particularly clear in the *Fiat Finance* judgment. After accepting the EC's claim that the tax ruling endorsed a methodology for determining FFT's remuneration that did not enable an arm's length outcome to be achieved and that resulted in a reduction of FFT's tax burden"[78], the GC considered that it was up to the appellants to "show that the Commission had wrongly concluded that the amount of tax payable by FFT was lower than that which it would pay under normal market conditions".[79]

60. The GC takes the chance to clarify its own role in these cases. As a rule, in annulment actions of the EC's decision on State Aid, the Court should "carry out a comprehensive review as to whether a measure falls within the scope of Art. 107(1) TFEU".[80] However, and as transfer pricing has an "approximate nature", the court's review is limited to "verify whether the errors identified in the contested decision, and on the basis of which the Commission found there to be an advantage, go beyond the inaccuracies inherent in the application of a method designed to obtain a reliable approximation of a market-based outcome"[81]. Thus, the judicial review is restricted to test: i) the logical coherence of the reasoning proposed by the EC (and whether there are no errors); ii) if this reasoning allows the conclusion that the pricing does not allow an approximation of a market-based outcome, beyond the "inherent inaccuracies". Mere identification of errors in the application of pricing methodologies does not suffice, for these purposes.[82]

61. A careful reading of both judgments shows that the outcome is sensitive to the way the parties formulate their arguments and to the level of evidence produced. In *Starbucks*, the GC easily dismissed the EC's claims that the royalties paid to Alki should have been zero[83], noting that there was economic value in the transacted IP. However, the dismissal would not be that easy (or would eventually not take place) if the EC would have instead argued and provided evidence that the amount of royalties had intolerably deviated from any reliable approximation of a market-based outcome since standalone companies would never define royalties by reference to the difference between, grosso modo, a company's revenues and its costs (regardless of the amount of revenue and of the costs).

III. Open Issues

62. The GC did not object to the EC's view that Art. 107(1) TFUE combined with the consideration of the purpose of CIT tax system "allows the Commission to check whether t[he] pricing corresponds to pricing under market conditions"[84] and that the arm's length benchmark for that assessment is not derived from domestic law or the OECD TP Guidelines.

63. Despite the references to prior case law, the GC judgments are, in our view, innovative. This still leaves room for interpretation on many aspects, including the exact meaning of the expression "reliable approximation of a market-based outcome". Does it mean that the EC can challenge TP arrangements that have been made with full compliance with domestic and OECD rules and the TP Guidelines? Does it mean that the outcome of any pricing needs to be reviewed using a new layer of analysis, focusing on assessing if the outcome is market-based? In the latter case, what is the exact content of that test?

[78] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 286.
[79] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 340.
[80] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 198 and *Luxembourg v. Commission*, para. 206.
[81] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 199.
[82] *The Netherlands v. Commission* (T-760/15 & T-636/16), paras. 201 and 211 and *Luxembourg v. Commission*, para. 207.
[83] *The Netherlands v. Commission* (T-760/15 & T-636/16), para. 360 et seq.
[84] *Luxembourg v. Commission* (T-755/15 & T-759/15), para. 143.

64. From this moment on, taxpayers can no longer rely entirely on a TP ruling as it can always be challenged by the EC, in case it considers that the ruling leads to a benefit that is not arm's length.

65. From this moment on, the ultimate word in what concerns transfer pricing is, from an administrative perspective that of the EC and, from a judicial perspective, of the CJEU.

66. From this moment on, full reliance on domestic statutes of limitation is no longer possible since what is considered aid can be recovered for the previous ten years. From a very practical perspective, this means that all documentation and dossiers have to be kept for much longer than the period indicated by company or tax law.

67. From this moment on, Member States have to be much more careful in the adoption of rulings and APA's and are pushed to strengthen their domestic transfer pricing rules, reviewing them carefully in order to remove any features that may lead to results that are not "market-based".

IV. The Statement

68. The CFE acknowledges the clarifications brought by the GC's decision as concerns the admissibility of the EC's action in checking the compatibility of MS's TP rulings with the TFEU's prohibition of State Aid particularly as concerns the burden of proof.

69. The CFE hopes that the CJEU will bring further clarity to the technical specifics of the arm´s length principle such as the admissibility of one-sided methods (such as the TNMM) and the permissible leeway used to assess MS measures in light of Art. 107(1) TFEU, as that "tool" is based only on the broad principle of MS's market-based corporate income tax systems.

70. The CFE notes that the new concepts and criteria are not sufficiently clear and leave ample room for divergent interpretations. The CFE is concerned by the impact on legal certainty that this situation creates for businesses across Europe, particularly taking into account that the recovery of aid may be requested for up to the ten previous years.

OPINION STATEMENT

Opinion Statement FC 1/2020 on the harmonisation of VAT penalties in the EU

Prepared by the CFE Fiscal Committee
Submitted to the EU institutions on 6 March 2020

This Opinion Statement discusses issues surrounding the justification for harmonisation of VAT penalties in the EU.

The movement to the destination principle in VAT and in particular the abolition of current distance sales rules in 2021 by Council Directive 2017/2455 mean that businesses are going to increasingly have to account for VAT in accordance with the rules of the country where their customer is established. Because they will understandably be less familiar with the rules and procedures in other states, there is also a greater risk that traders based in other states may by accident make mistakes. Small businesses in particular may be apprehensive about undertaking cross-border transactions if this potentially results in them being subject to relatively draconian penalties in other Member States. Such businesses are also likely to have particular difficulties in disputing any claims for penalties.

The logistical and financial burdens of instructing advisers in other states for advice and then in disputing any penalties are likely to be especially onerous for them. If correspondence is sent to them in a language that they do not understand, they may have difficulties in knowing that penalties are being sought and the basis and time limits for disputing the penalties. If demands are sent by post, delays in sending post between Member States may also cause them problems in disputing demands in time.

Although principles of European Union law require penalties to be proportionate, courts are likely to be reluctant to brand penalties as disproportionate. Member States currently therefore have considerable discretion when setting penalties. Given the changes being made to the VAT system and the burdens that these will place on businesses established in other States, CFE Tax Advisers Europe considers that both the Commission and the Member States should seek to harmonise or increasingly harmonise the basis upon which penalties are imposed. This applies both to the level of penalties imposed but also in relation to the procedures for disputing penalties. This is particularly the position when the penalties relate to cross-border sales. There is also a need for Member States to provide literature that is easily accessible to traders in other Member States which explains the basis upon which penalties are calculated and imposed and how penalties can be mitigated and disputed and relevant national time limits. This guidance should ideally be in all the national languages of the Union. It certainly needs to be available in English and other major languages of the Union.

In this regard CFE Tax Advisers Europe observes that:

1. A number of Member States have sought to charge interest on unpaid VAT at penal rates. For example, we understand Slovakia and the Czech Republic impose rates of 15%+ and Poland has just reduced its rate to a still very high 8%. Such interest rates effectively become a no-fault penalty for making an error. Over a period of time such interest liabilities can become very significant. Because they may only be making very occasional supplies in the Member State in question, there is also a danger that tax authorities may take longer to notice errors made by traders who are established in other states. As such, there are particular dangers that they may be penalised by these heavy charges. We consider that it would be good practice if interest rates were aligned to those in the commercial markets and should not act as a disguised no-fault penalty. On this basis it must also be doubtful if it is appropriate to have significantly higher rates of interest charged on underpaid VAT than is paid on repayments of overpaid VAT and no interest should be charged if the taxpayer has a valid claim for overpaid tax during a period that matches any claims by the tax authority;

2. We do not consider that it is appropriate for any or any material penalties to be imposed on traders who have made careless errors if they make a voluntary disclosure of the error. The imposition of material penalties clearly will discourage traders from correcting the position;

3. We do not consider that it is appropriate for any penalties to be imposed on a trader who has a reasonable excuse for an error and in particular for traders who have made an error as a result of taking legal advice on an issue of uncertainty. For example we understand that penalties may be imposed in Austria in these cirucumstances unless the error arises from a judicial decision which is subsequently overturned. This defence is in our view unduly restrictive;

4. We are concerned that the level of penalties imposed by some countries are disproportionate. For example, we understand that in Italy 90-180% penalties can be imposed for failures to account for output tax liabilities. In Belgium 200% penalties can be imposed. In Italy, this is also the position even though there has been no loss of tax because the person subject to the output tax liability has a corresponding claim to recover input tax, for example when there is a reverse charge on the receipt of supplies with a corresponding right to recover input tax. Indeed, the tax authority will more generally suffer no loss in cases where the sale is to a business customer whose right of deduction is correspondingly impacted. Especially for non-deliberate errors, we, in any event, consider that this rate of penalty is disproportionate even in cases where tax is overall due. It is clearly even more disproportionate in cases where there is no overall liability because there is a corresponding claim to recover input tax. We consider that no penalties and certainly no material penalties should be due in a case where a corresponding right to deduct input tax means that there is no overall loss of tax;

5. We are also concerned that some states allow penalties to be set at a far lower rate if the trader reaches a negotiated settlement with the tax administration. For example, we understand that in Italy such settlements can result in a taxpayer paying a penalty which is just 10-20% of the minimum penalty that would otherwise apply. Although less extreme, similar rules also apply in Spain. Such a regime is a matter of concern because it effectively makes it commercially very difficult for a trader to dispute whether any penalties are due if the consequence of doing this is a penalty over ten times larger, especially given the time and costs involved in disputing the penalties. We consider such regimes are difficult to reconcile with the rule of law. Going forward, in the cross-border context, particularly with small traders, we are also concerned that traders may be subjected to disproportionate penalties because they are not aware of the facility to negotiate a much lower penalty. This is particularly true if there are time limits that have to be complied with if a trader is to take advantage of any mitigated penalties. We are also concerned that having a very high level of penalties for all errors, such as in Belgium of 200%, in practice has a similar effect;

6. We note that minimum fixed penalties are likely to impose disproportionate burdens on small traders established in other Member states who are only likely to make relatively low value supplies in another country;

7. Most penalties are likely to be regarded as criminal for the purposes of the European Convention on Human Rights. Article 6(3) of the European Convention of Human Rights recognises that in criminal matters a person has a right to translation if they do not understand the language of the court. Article 41 of the Charter of Fundamental Rights of the European Union also gives a right to correspond in all the national languages of the Union. Article 52(5) of the Charter also envisages that the Charter applies to Member States when they are implementing European Union law. Recognising these facts, the Netherlands provides guidance on penalties in other languages. Other states should follow this practice. Indeed, it would clearly be desirable if this practice could be extended to any demands for tax, and not just to penalties;

8. Consideration should be given to having extended and harmonised time limits for disputing demands on cross-border supplies and claims for refunds, or possibly having harmonised time limits more generally. This reflects the fact that:

   (i) a trader who pays tax in one Member State in error and fails to pay tax in another Member State may find that they have to pay the tax and penalties in the State where they failed to pay any tax but could find that they are out of time to make a claim to recover the tax that they have overpaid in the other State. The trader will effectively be subject to a double penalty in the situation;

   (ii) there are clearly greater risks of delays in the postal system when correspondence is sent by post between Member States. It also reflects the fact that there will inevitably also be additional logistical issues in seeking cross-border advice, especially if the correspondence is not sent in the national language of the trader;

   (iii) having well-advertised harmonised time limits will also assist taxpayers in knowing what time limits they have for disputing demands. It would clearly be desirable if this could also be extended to appeals against demands for tax;

9. Since it acts as a de facto penalty, we also have concerns about tax authorities disputing claims to deduct input tax because of minor defects which cases such as C-332/15 *Astone,* at paragraphs 43-44, establish are not consistent with European Union law. Similarly, in Case C-533/16 *Volkswagen AG v Finančné riaditeľstvo Slovenskej republiky* the Court considered that national time limits could not be relied upon to prevent an input tax claim when the claimant had previously not been provided with a VAT invoice. We consider that it would be helpful if the Commission could provide guidance on this issue.

Given the abolition of the distance sales rules in January 2021, the CFE Tax Advisers Europe considers that these issues should receive urgent attention by the Commission and the Member States.

CFE tax advisers europe

OPINION STATEMENT

Opinion Statement FC 2/2020 concerning the deduction of import VAT on the import of goods

Prepared by the CFE Fiscal Committee
Submitted to the EU Institutions on 13 March 2020

This Opinion Statement discusses the implications of the decision of the Court of Justice of the EU in the case of C-187/14 *Skatteministeriet v DSV Road A/S*.

In case C-187/14 *Skatteministeriet v DSV Road A/S* the Court of Justice took the view that a haulier had no entitlement to deduct VAT incurred on the import of goods it was transporting for its customers. The Court took the view that the mere fact that the haulier transported the goods was not sufficient to mean that the goods were "used" for the purposes of the haulier's taxed transactions, and therefore did not give rise to a right to deduct import VAT under Article 168 of the Principal VAT Directive 2006/112/EC. At paragraph 50, the Court observed that "the goods transported does not form part of the costs making up the prices invoiced by a transporter whose activity is limited to transporting those goods for consideration". Subject to the comments below and assuming that any recharge by the haulier is not considered taxable consideration, this is clearly a sensible view, since it would be distorting of the VAT system to allow a haulier to recover import VAT on the import of goods belonging to another when the owner will not be using them for purposes that confer a right of deduction.

However, an even more restrictive view has now been taken by HMRC in the United Kingdom in HMRC Brief 2/2019. HMRC would appear to be taking the view that it is only the owner of the goods who can deduct the VAT charged on the import of the goods and the owner needs to have paid that import VAT in order to secure that right. On this basis, HMRC suggest that a former owner who passes ownership of the goods immediately before import cannot recover the import VAT. They also suggest that toll-operators who process goods that they do not own have no entitlement to recover import VAT.

It is also clear that that is the view of the Slovak authorities since a similar approach has been taken by them in a reference to the Court of Justice in C-621/19 *Weindel Logistik Service SR v Finančné riaditeľstvo Slovenskej Repuvliky*, lodged on 20 August 2019. In that case the taxpayer was liable for import VAT on goods that belonged to another which it repackaged in the Slovak Republic prior to their sale in other countries. The Slovak tax authorities and courts took the view that it has no right to deduct under Articles 167 and 168 of the Principal Directive because it was not the owner of the goods and was not making a supply of the goods. It is possible that some other Member States may also take this restrictive view. However, it is our understanding that a number of other Member States take a broader view, which for the reasons outlined below is to be preferred.

In reaching its view in HMRC Brief 2/2019, HMRC evidently took account of the non-binding conclusions expressed by the European Union VAT Committee on 19 October 2011[1] which stated:

> *'The VAT Committee almost unanimously confirms that a taxable person designated as liable for the payment of import VAT pursuant to Article 201 of the VAT Directive shall not be entitled to deduct if both of the following conditions are met:*
>
> *he does not obtain the right to dispose of the goods as owner;*
>
> *the cost of the goods has no direct and immediate link with his economic activity.*
>
> *This shall be the case even if that taxable person holds a document fulfilling the conditions for exercising the right of deduction as laid down by Article 178(e) of that Directive.'*

1 There were also discussions on the issue on 5 May 2011.

However, unlike the Brief, this guidance is not just focused on the ownership of the assets but also focuses on the lack of any direct and immediate link between the goods and the claimant's taxable activities. It is only when both these conditions are not satisfied that the VAT Committee states that no right of deduction arises. The opening words of Article 168 of the Principal VAT Directive requires the goods to be "used" for the purposes of the taxable activities. Nothing in the wording suggests that this always requires ownership of the goods before a right of deduction arises. This conclusion is fortified by Article 178(e) of the Principal Directive, which clearly envisages that the person who has the right to deduct is the "consignee or importer" of the goods, rather than the owner of the goods. As we note below, we do not consider that the owner of the goods will always be the "consignee or importer".

For example, it would seem surprising if a lessee of an asset should have no right of deduction, even though the asset is directly used in its business. An example would be a haulier who leases a lorry. Although the haulier never becomes the owner of the lorry, the asset is then being directly used in the business to make its supplies, so it becomes difficult to see why any import VAT the lessee pays on the lorry should not be deductible since the lorry is clearly "used" in his business and, on account of the rent paid for its use, it constitutes a cost component of the business. The lessee would also be naturally described as a "consignee or importer" and is therefore the person who Article 178(e) of the Principal Directive envisages having a right of deduction. In this regard we observe that we do not consider that the owner of the lorry would be described as the "consignee or importer" of the goods when the decision to move the lorry was taken by the lessee and the owner therefore played no role in the movement. Support for this conclusion is also provided by the decision of the Dutch Supreme Court no 11/03207 of 4 October 2013. That case concerned a yacht which the lessee chartered. The Dutch legislation in relation to import VAT provides for it to be due and recoverable on goods "intended for an entrepreneur": see Article 15(1)(c)(1) and 23 of the Turnover Tax Act 1968. Although the decision was focusing on the payment of import VAT, the Dutch Supreme Court considered that the lessee should be regarded as such an entrepreneur even though it did not own the yacht but merely leased it. It follows from its reasoning, and the relevantly identical wording of the Dutch legislation conferring a right of deduction, that it would also have considered that there was also a right of deduction.

Similar considerations apply to a person who only acquires ownership of goods for the purposes of his business shortly after the import occurs. It is very common in practice, for purely commercial reasons, for contracts to contain a retention of title clause and also make the supplier liable for the insurance of the goods with the customer paying for the goods on delivery, but the customer is made liable for the import VAT (this will be the position if DDU Incoterms are used). Assuming the supply did not occur prior to the import, is the customer to have no right to deduct the import VAT in such circumstances even though he subsequently uses the goods for the purposes of his business and paid the import VAT? Surely the right to acquire title to the goods and the subsequent payment for the goods means that the relevant nexus between the costs of the goods and the economic activities exists, so that a right of deduction arises even though ownership passes after the importation of the goods. Such a customer is in a different position to the haulier considered in C-187/14 *Skatteministeriet v DSV Road A/S*, since the cost of the goods clearly then also forms a cost component of his activities. The customer in such a case would also be naturally described as a "consignee or importer" for the purposes of Article 178(e) of the Principal Directive, since the goods are being sent to the customer, which again suggests the customer should have a right of recovery.

We also consider that similar considerations apply when goods are returned to a supplier under a warranty claim for repairs. The prior ownership of the goods means that there is a link between the cost of the goods and the taxable person's economic activity. Because the goods are being shipped back to the supplier, the supplier would also naturally be described as a "consignee or importer" for the purposes of Article 178(e) of the Principal Directive. The supplier who sells goods and transfers title immediately prior to their import is also in a different position to the haulier considered in C-187/14 *Skatteministeriet v DSV Road A/S*, since the cost of the goods clearly then also forms a cost component of his activities. If he incurs the import VAT, we therefore have difficulty in seeing why he should not be regarded as a relevant importer with a right of deduction. Another similar case may be a commissionaire or agent who contracts in his own name and is treated as both receiving and making a supply but never obtains ownership of the goods.

For these reasons, it is considered that a test that purely focuses on ownership is unduly restrictive, and a right of recovery should exist in these cases.

In this regard it is significant that in C-132/16 *Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Sofia v 'Iberdrola Inmobiliaria Real Estate Investments' EOOD* the Court of Justice considered that input tax could be deducted on a sewerage plant belonging to a local authority because the expenditure was incurred on account of the taxpayer's taxable activities. If ownership of an asset is not a precondition to generally deducting input tax, it would be surprising if it is always a condition to deducting import VAT on the importation of goods. It is also significant that the Court, in C-320/88 *Staatssecretaris van Financien v Shipping & Forwarding Enterprise (SAFE) BBV*, considered that what constituted a supply of goods was a Community law concept, and therefore could not be determined solely by reference to national law. In that case the Court considered that a supply of goods occurred when a person acquired a right to dispose of tangible property as owner, even if there was no legal ownership of the goods. It would therefore be very surprising if rights to recover import VAT were dependent on ownership as a matter of national law. It is considered that even making the right dependent on possession of a current right to dispose as owner is unduly restrictive. Cases such as C-29/08 *Skatteverket v AB SKF* suggest that a right of deduction should arise if there is a direct and immediate link between the import and the taxable person's economic activities, and it is unduly restrictive to suggest that such a link always requires current ownership.

As we have highlighted above, we agree the decision in C-187/14 *Skatteministeriet v DSV Road A/S* is correctly decided. However, it would undermine the neutrality of the tax if a haulier's customers cannot deduct the import VAT paid by a haulier when the goods are used in its customer's business. This is particularly true, and is likely to be the position, when the import VAT is recharged to the customer as a disbursement. The Court of Justice in case C-414/10 *Veìleclair SA v Ministre du budget, des comptes publics et de la Réforme de l'Etat* held that input tax could be deducted on an importation even though it has not been paid by the person importing the goods providing they have import documentation showing that they are the importer or consignee. It follows that an importer or consignee must have a right of deduction even though another person, such as the haulier, has paid the import VAT. However, it is a matter of concern that some States, for example the United Kingdom, require a person seeking to deduct the import VAT to be in possession of documentary proof that they can only obtain by the tax being explicitly paid by them or on their behalf. Such a requirement is inconsistent with the reasoning of the Court in *Veìleclair SA v Ministre du budget, des comptes publics et de la Réforme de l'Etat*. Article 178(e) of the Principal Directive makes it clear that the right to deduct is dependent on a person having import documents showing that they are the consignee or importer and also proving “the amount of the VAT due and enabling that amount to be calculated”. It does not require proof that that person or a person acting on his behalf paid the import VAT or even that the import VAT has been paid. Particularly when it has been recharged to them, the neutrality of the tax makes it essential that the national rules should ensure that a consignee or importer should have a right to deduct the import VAT, even if it has been paid by another not specifically in their name, if it is used in the importer’s or consignee’s taxable activities. National rules of proof should not be framed in a manner that effectively frustrates that right unless the taxable person has directly paid the import VAT, or it has been explicitly paid in their name.

If a restrictive interpretation of the current rules is considered correct, we would suggest that consideration should also be given to changing the rules so that the import documentation can be used to nominate that either the supplier or customer should be the person with a right to recover import VAT irrespective of the precise ownership of the goods at the time, provided the person nominated uses the goods to make taxable supplies. We understand that this is the basis upon which recovery is allowed in the United Arab Emirates. We consider that such an approach is consistent with the long-term European Union policy of trying to stimulate imports of foreign goods to be processed in the EU and subsequently exported from the EU, as reflected with inward processing and similar reliefs. Restricting the right of deduction on imports is likely to discourage people from sending goods to the Union. Indeed, we would suggest that this is a reason why a less restrictive interpretation is to be preferred.

The CFE Tax Advisers Europe considers that these are issues that warrant review by both the Commission and the States concerned. Having a rule that seeks to limit the right of recovery of import VAT to the owner of goods is liable to discourage people bringing goods into the EU for business purposes, for example for leased aircraft, and is undesirable for that reason.

OPINION STATEMENT

Opinion Statement FC 3/2020 on the Directive on Tax Dispute Resolution Mechanisms in the European Union

Issued by the CFE Fiscal Committee
Submitted to the EU Institutions on 20 March 2020

CFE Tax Advisers Europe is the European umbrella association of tax advisers. Founded in 1959, CFE brings together 33 national tax institutes, associations and tax advisers' chambers from 24 European countries, representing more than 200,000 tax advisers. CFE is part of the EU Transparency Register no. 3543183647-05.

We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Stella Raventós-Calvo, Chair of the CFE Fiscal Committee or Aleksandar Ivanovski, Tax Policy Manager at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

1. Introduction

CFE welcomes the Commission's intention to expand and improve the mechanisms available to Member States to resolve double taxation disputes with the introduction of Council Directive No. 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (the "Directive").

CFE commented on this matter in the context of the OECD BEPS consultation process in April 2016[1] and when the proposed Directive on Double Taxation Dispute Resolution Mechanisms was subject to public consultation in May 2017[2]. This Opinion Statement complements these previous opinion statements.

2. Background

Double taxation impedes the ability of entrepreneurs operating cross-border to develop their business and consequently decreases the competitiveness of the Single Market. Easily accessible, efficient and effective dispute resolution mechanisms are a crucial element in achieving fair and effective taxation within the Single Market. At present, there are a large number of outstanding cases[3]; in addition, more comprehensive audits by tax authorities are increasing the number of such cases. These developments make the implementation of a properly functioning dispute resolution mechanism crucial.

In general, CFE welcomes this Directive and views it as a positive development. Several aspects which CFE especially appreciates were summarised in CFE´s Opinion Statement FC 4/2017 on the proposed Directive on Double Taxation Dispute Resolution Mechanisms in the European Union issued in May 2017, including, inter alia, its extended scope compared to the EU Arbitration Convention, increased efficiency and effectiveness in the process, and higher tax certainty as a result.

Given that the purpose of the Directive is to facilitate resolution of disputes which arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation, it appears to the CFE that the scope should also cover the EU Directives in the field of taxation, since different application and interpretation of these Directives by different Member States may result in disputes and double taxation. CFE also wishes to draw attention to the fact that the wording of the second sentence of Art. 2(2) may cause difficulties in resolving tax disputes under the mechanisms of the Directive. The wording does not determine the Member State whose laws should prevail in giving definitions to the terms involved. While this article follows closely Art. 3(2) of the OECD Model Tax Convention it is not clear whether the interpretation and guidance provided in the Commentaries to the OECD Model Tax Convention should be, or would be, adopted by the Member States, particularly those that are not members of the OECD.

3. Comments on Procedures under Directive

CFE in particular appreciates that the Directive expands the existing mechanisms for taxpayers under previously available possibilities by broadening the scope of disputes that could be settled, streamlining

[1] CFE and AOTCA Opinion Statement FC 4/2016 on the OECD BEPS Final Recommendations, April 2016, available on the CFE website: http://taxadviserseurope.org/wp-content/uploads/2018/05/CFE-AOTCA-Opinion-Statement-FC-4-2016-on-the-Final-BEPS-Recommendations.pdf

[2] Opinion Statement FC 4/2017 on the proposed Directive on Double Taxation Dispute Resolution Mechanisms in the European Union, May 2017, available on the CFE website: http://taxadviserseurope.org/wp-content/uploads/2018/05/CFE-Opinion-Statement-FC.04.2017-on-Dispute-Resolution_0.pdf

3 See https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en

the process and addressing some of the shortcomings. Consequently, CFE considers the Directive to be a positive development.

In spite of the overall positive developments, there are nevertheless outstanding issues that, in CFE's view, merit further consideration. To that end, CFE is setting out its views on the matter hoping that these comments will be helpful in any future revisions of the Directive or in other developments in the resolution of tax disputes.

3.1 Length of dispute resolution process

The positive development for taxpayers and for tax certainty generally is that the Directive introduces a stipulation for the mandatory resolution of income tax disputes subject to a strict and enforceable timeline.

In spite of such a strict timeline, the dispute resolution process under the Directive could still take up to 5 years. Such a length of time for the proceedings, in particular from a taxpayer's point of view, does not represent an *effective* dispute resolution process. If the process under the Directive is reviewed with a view to making changes, it should be amended so the binding resolution is achieved within 2 to 3 years at most.

3.2 Taxpayers' Role and Rights

The Directive entitles the taxpayer to initiate the proceedings. CFE observes that under the Directive, the taxpayers' rights are broader than rights available under other tax dispute resolution mechanisms, such as the MAP procedure or under the EU Arbitration Directive. These additional rights include, for example, that taxpayers will be notified of the terms of reference of the dispute, the proposed timeframe for completion and the terms of conditions of the involvement of third parties.

However, the closer involvement of the taxpayer in the process would increase tax certainty and trust of taxpayers in these types of dispute resolution procedures. An example could be the taxpayer being entitled to propose or submit evidence, and/or their more active participation in the process.

3.3 Creation of Advisory Commission or an Alternative Dispute Resolution Commission

CFE welcomes the flexibility that the Directive offers in the form of an option between the Advisory Commission or the Alternative Dispute Resolution Commission (the "Commissions"). Such flexibility can simplify and accelerate the dispute resolution process.

One of the crucial elements of an effective and efficient dispute resolution process is transparency in the selection of the persons who are decision makers, i.e. arbitrators or members of committees whose decision will be the basis for final resolution of the dispute.

Therefore, CFE believes that a more transparent process of selection of members of the Commissions should be considered. In addition, the right of the concerned taxpayer to file an objection against the member of the Commission that they consider is not an impartial or independent member could increase the trust of the taxpayer into the transparency of the whole process.

3.4 Lack of Independent Persons of Standing

CFE agrees that any person elected as a member of any of the Commissions should be experienced and knowledgeable, as well as fully independent and impartial from the parties involved in the particular case. On the other hand, CFE notes that the criterion listed in Article 8, point 4 letter (d) is so strict that it could be a serious problem identifying a suitable person in some countries, in particular in those countries where the judges are not allowed to perform activities other than judicial activities. Needless to say, those persons suitable to be members of these Commissions should have solid knowledge in the field of international taxation. CFE therefore strongly suggests reconsidering the necessity of the criterion stated in Article 8, point 4 letter (d) of the Directive.

Additionally, an option to not implement the decision due to a lack of independence should be further considered. Any independence concerns should be raised upon appointment to avoid delays. Since there is no guidance on independence, a wide discretion has been given to national courts. Alternatively, some guidance should be issued in this area.

3.5 Dispute Administration Body

Experiences from other dispute resolution forums, in particular from arbitration, show that the dispute resolution process can be more effective and rapid if there is an institution taking care of administration of the dispute resolution process. These institutions could administer the case, send reminders to parties or arbitrators, and share experience of procedural issues based on previous experience.

For the purposes of disputes under the Directive, the Permanent Court of Arbitration could be a suitable institution as it already has experience with administering cases between states.

Such an institution could also maintain the list (either publicly available or not) of persons having necessary skills and experience to act as arbitrators or members of the Commissions. In addition, it could also be considered that such an institution would serve as the appointing body if any party to the dispute were inactive in the selection process.

3.6 Form of Decision given by Commissions

Under the Directive, the Commissions reach conclusions and issue an opinion. If the competent authorities fail to reach an agreement as to how to resolve the question in dispute, the opinion of the Advisory Commission or Alternative Dispute Resolution Commission shall become a binding resolution of the dispute. However, the Directive does not provide any formal requirements for this opinion, for example a requirement to set out the reasoning.

Considering this fact, the CFE would welcome a legal requirement to state clearly in the opinions the reasons/arguments which led the Commissions to reach their conclusions. Such an approach would have several advantages. It could: (i) increase tax certainty and the trust of the taxpayer in the dispute resolution process, (ii) decrease the risk that the cases on tax disputes will be subject to political trade, (iii) increase predictability of the results for similar cases in the future and finally, as a result of all these aspects, (iv) could lead to a lower number of tax disputes in the future.

3.7 Introduction of Instruments to Stimulate Prompt Decision

Whilst in many cases the tax will already have been paid in the first State prior to dispute procedure being invoked, it may be worth considering using the payment of the tax or obligation to pay interest as a leverage to encourage speedy resolution of disputes between tax authorities. For example, the use of escrow accounts whereby the tax would become lodged in an account, which would only become unblocked once there has been a satisfactory resolution of the dispute. The sum should be limited to the highest amount of tax which may become due in order to avoid double taxation.

4. Parallel Mechanisms

Currently, a dispute involving the interpretation of double taxation treaties can be solved in several forums using the various dispute resolution methods available. On one hand, the introduction of the new instrument is welcome as it brings another possibility which a concerned taxpayer could consider using to defend its rights. In particular, the CFE believes a broader and more flexible approach to the form of alternative resolution procedure which can be applied will greatly improve the process for both the competent authorities and the taxpayer.

On the other hand, the multiple means of resolving disputes available in this field of tax law increase opacity and uncertainty.

Briefly, the following dispute resolution instruments are available:

i) National legal remedies are generally not very effective when dealing with double taxation disputes on the basis that national courts do not have jurisdiction to rule on the levying or reduction of taxes in another jurisdiction. Therefore, the inability to bind the other jurisdictions in cases of double taxation results in the taxpayer not getting an effective remedy before the national courts. In addition, it is common practice that domestic law prohibits tax authorities from deviating from the decisions of national courts. Therefore, any decision arrived at under another mechanism contrary to the decision of a domestic court may be rendered ineffective in practice.

ii) The Mutual Agreement Procedure derived from Article 25 of the OECD Model Tax Convention. MAP entitles the tax authorities negotiating an agreement to cancel the double taxation; the taxpayer is not a party to the proceedings. Under the majority of tax treaties, countries are only required to “endeavour to resolve” the dispute, so in many cases no agreement is reached and the double taxation remains outstanding. This could be alleviated in a limited number of tax treaties by a provision for mandatory binding arbitration at the request of the taxpayer if agreement has not been reached within 2 years of the presentation of the case (inserted into the OECD Model Tax treaty in 2008 and to be introduced through MLI implementation).

iii) The EU Arbitration Convention provides for mandatory binding arbitration, but only in relation to transfer pricing related disputes which satisfy three preconditions. The taxpayer has three years from the date of the impugned notification to invoke the procedure. If the authorities fail to reach agreement within 2 years, mandatory binding arbitration is invoked. An advisory commission is set up with both tax authorities represented; a decision is reached within 6 months.

iv) The Directive provides several alternatives of how to reach binding resolution. The taxpayer can initiate the dispute resolution process within 3 years from the receipt of first notification. The competent authorities have 6 months to determine whether to accept the complaint (subject to the provision of outstanding information) and a further 2 years to resolve the double taxation by means of the mutual agreement procedure (this period can be extended by one year). In the event that the Member States fail to reach agreement to eliminate double taxation pursuant to the MAP procedures, the Advisory Commission or the Alternative Dispute Resolution Commission is established and issues an opinion. The competent authorities are not bound by the opinion of either of the Commissions, however, if they do not reach an agreement on an alternative conclusion within six months, the opinion becomes binding.

Although all these aforementioned existing procedures were introduced with an aim to assist taxpayers in mitigating and redressing the effects of double taxation, their parallel existence creates the question of which is the most appropriate procedure for the taxpayer to initiate and increases tax uncertainty.

Consideration should be given to the practical implications for taxpayers and tax authorities of parallel arbitration/MAP procedures/procedure under the Directive being available to the taxpayer to invoke. The Directive does not address how to resolve parallel proceedings that could arise in practice (though some issues are dealt with in Article 16 of the Directive).

In theory, Member States should seek to achieve a satisfactory outcome for the taxpayer; in reality, however, a conflict of interest can arise for the Member States in the negotiating process. Under the present system, negotiations do not take place on a legal level but more on a political level in the sense that they take place between the tax authorities.

Consequently, problems arise in relation to legal certainty and the effectiveness of the process, particularly for the taxpayer. All the aforementioned dispute resolution procedures (in particular the MAP) are costly and time consuming and the outcome of the procedure is extremely uncertain for the taxpayer. CFE notes that from the taxpayer's perspective, the aim of the procedure is not solely to resolve the double taxation but also to clarify the nature and extent of the taxing rights of the different jurisdictions as guidance for its future activities. A decision stating clear reasoning for the outcome is therefore imperative for development of cross border business activities.

5. Extension of Scope for Other Tax Fields

A crucial element of the Directive in comparison to the EU Arbitration Convention, which is limited to transfer pricing, is the extension of the scope of relevant disputes covered to all cross-border double income taxation issues.

However, for the competitiveness of the EU Single Market it will be crucial to introduce additional instruments and mechanism for the avoidance of double taxation, which are not limited to income tax disputes. CFE therefore fully supports any initiative to introduce techniques for avoidance of double taxation and for dispute resolution for other taxes such as for example VAT, inheritance tax, donation tax or insurance tax.

Finally, due consideration should be given to the possibility of extending the existing mechanisms to double tax disputes arising from unilaterally introduced digital services taxes (DST) around the EU. DST are not income taxes, but revenue or turnover taxes. It is widely accepted in academic literature[4] that turnover taxes do not fall within the scope of the OECD Model and tax treaties. Considering that revenue or turnover taxes are substantially similar to indirect taxes, they do not qualify for treaty relief.

Specifically, if a tax is not a 'covered tax' under Article 2 of the OECD Model Tax Convention, it would consequently not be covered by either the 'distributive' articles of the OECD Model, nor would it qualify for dispute resolution under the Mutual Agreement Procedure (MAP) of Article 25 of the OECD Model. Accordingly, such indirect taxes would not qualify for relief from double taxation under Article 23 of the OECD Model in the residence jurisdiction of the taxpayer, and will inevitably result in double or multiple taxation.

A key policy consideration in a situation in which a tax (for example, DST) is not a covered tax for tax treaty purposes is the inability of a taxpayer to claim double taxation relief, which is a point to be considered in the future revisions of this Directive.

The CFE hopes that these comments will be helpful in any future revisions of the Directive or in other developments in the resolution of tax disputes.

4 Philip Baker, International Tax Law and Double Taxation Conventions 2B.10 (Sweet & Maxwell 2017)

OPINION STATEMENT

Opinion Statement FC 4/2020 concerning double taxation in VAT

Prepared by the CFE Fiscal Committee
Submitted to the EU institutions on 27 March 2020

This Opinion Statement discusses double taxation in VAT within the European Union.

CFE Tax Advisers Europe is a Brussels-based association representing European tax advisers. Founded in 1959, CFE brings together 33 national organisations from 26 European countries, representing more than 200,000 tax advisers. CFE is part of the European Union Transparency Register no. 3543183647-05. We would be pleased to answer any questions you may have concerning our Opinion Statement. For further information, please contact Ms. Stella Raventós-Calvo, Chair of the CFE Fiscal Committee or Brodie McIntosh, Tax Technical Officer, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

Double taxation in all its forms inhibits the single market. It is possibly surprising that VAT, which is largely, but not completely, a harmonised tax within the European Union, has no formal cross border mechanisms for avoiding double taxation. In the direct tax sphere, there are double tax treaties between countries. Within the Union, since 1 July 2019, it is also possible to rely on Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union. Surprisingly, there are no similar measures relating to VAT.

Although there is no formal machinery for avoiding double taxation, the Commission has sought to facilitate a system of cross-border rulings. Currently only some Member States have joined this project and we would seek to encourage other Member States to join. The approach of different Member States who have joined the project has also differed. Some Members States have been more willing to engage in the exercise in a constructive and flexible manner so as to avoid double taxation. Such a constructive approach is to be encouraged and is welcomed. We also welcome the Commission's publication of details of a number of the rulings, which can be found here. Providing details of the rulings clearly assists transparency and increasing awareness of the ruling system. Possibly on account of ignorance of the project and the limited number of Member of States that have agreed to participate in the project, the numbers of rulings that have been sought has so far been limited.

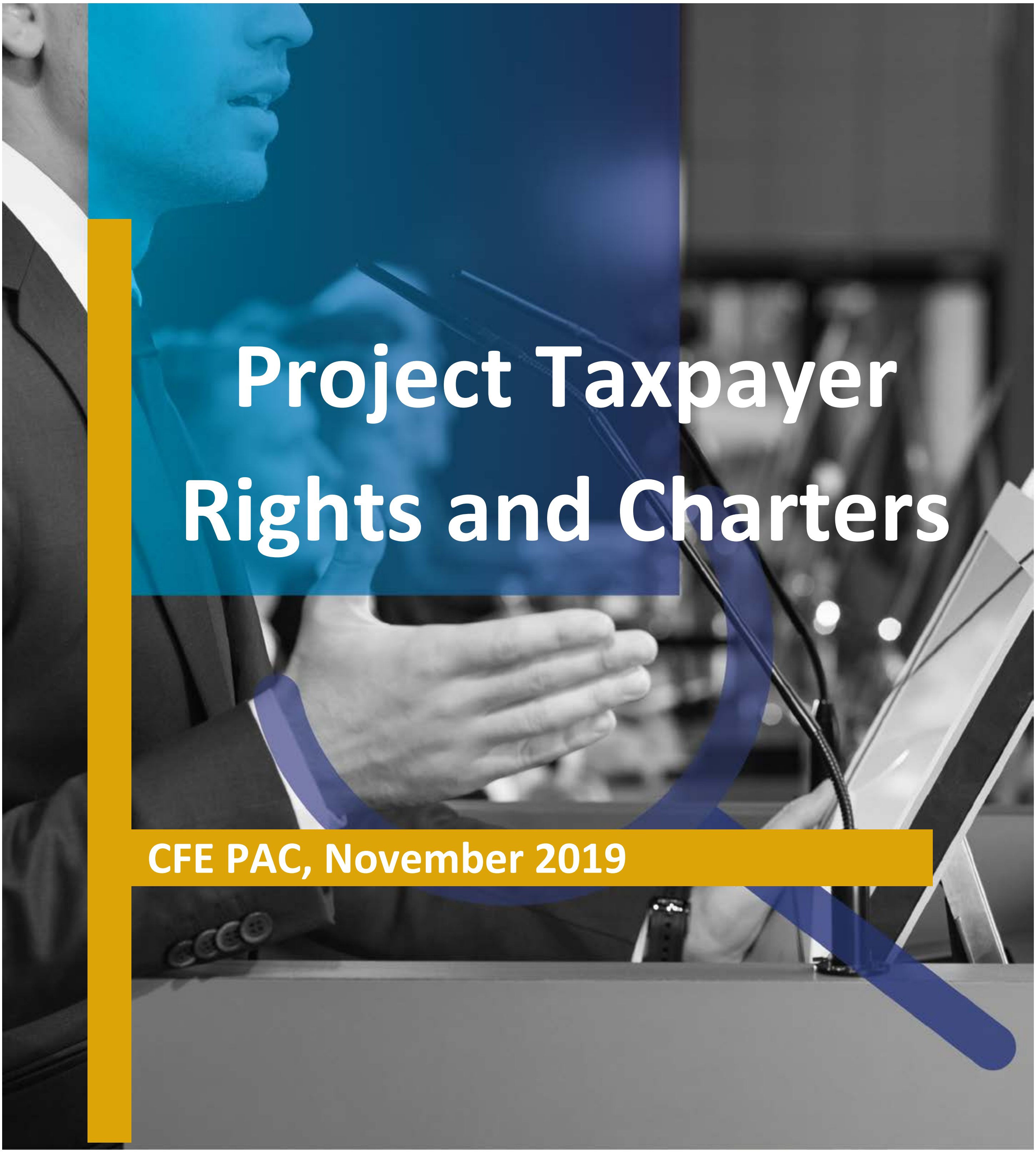
Rulings are by their very nature prospective. The CFE also welcomes the fact that the European Commission has also established SOLVIT to provide assistance in resolving disputes in relation to European Union rights. Details of this scheme can be found here. Under this scheme the Commission seeks to assist in resolving any dispute. This can, in appropriate cases, include issues relating to VAT.

The Commission's work on both these programs is welcomed. It is to be hoped that more Member States will agree to participate in the project on cross-border rulings and will seek to participate in as constructive manner as is possible. We can also see merit in seeking to introduce more formal post-transaction mediation procedures in cases where more than one Member State is seeking to tax a transaction. This may help to reduce the need for references to the Court of Justice of the European Union.

Consideration should also be given to having a more formal machinery for avoiding issues of VAT double taxation within the Union and also between members of the Union and third countries that also operate VAT systems. This could include having separate double tax treaties directed at VAT, as is the position for capital taxes. Within the Union, there could also be a directive or regulation directed at this issue. Indeed, there would almost certainly be merit in extending any arrangements by agreement to third countries that have similar systems. Obviously one other way of avoiding double taxation and for that matter double non-taxation would be to further harmonise the rules relating to VAT in the Union.

Questionnaires

CFE tax advisers europe professional



Project Taxpayer Rights and Charters

CFE PAC, November 2019

The questionnaire was designed to find out some basic information about the way taxpayer rights and obligations are dealt with in CFE Member countries and how those countries deal with complaints about the way the tax system operates and affects the individual taxpayer.

It follows on from earlier work by CFE Tax Advisers Europe in modelling a Taxpayer Charter.

The following countries took part in the survey: Austria, Belgium, Croatia, Czech Republic, Ireland, Italy, Poland, Slovakia, Spain, The Netherlands and United Kingdom.

Tax Charter

1. Does your country have a Tax Charter, such as in the Fundamental Principles set out in the CFE Model Taxpayer Charter?

Austria	Taxpayer's procedural rights and obligations are protected extensively by law ("Bundesabgabenordnung" or "BAO" – "Federal General Tax Code"), which also covers the rights and obligations of tax advisors ("Steuerberater"). Tax advisor is a fully regulated profession with similar rights and obligations as lawyers, including client-attorney privilege. The rights and obligations of the tax administration are also dealt with in the "BAO".
Belgium	No, as civil law country we have clear procedures laid down by law for the different kinds of fiscal levies and complaints. These procedures include the creation, by the law of 25/4/2007, of the Tax Conciliation Unit in the tax administration.
Croatia	Yes.
Czech Republic	There is no Tax Charter in the Czech Republic.
Ireland	No.
Italy (ANTI)	Yes.
Poland	No.
Slovakia	No, Slovakia does not have a Tax Charter.
Spain (AEDAF)	No, there isn´t currently a tax Charter.
The Netherlands (NVAB)	No.
The Netherlands (NOB)	No.
United Kingdom	Yes.

2. Is the Charter set out in law or is it in an administrative statement?

Austria	See answer 1 – by law and interpretative administrative directives.
Belgium	The rules are set out in law.
Croatia	Both, as a Law (General Tax Act) and administrative rules (ethical codex).
Czech Republic	The Tax Code contains the main fundamental principles, also tax law contain some of them.
Ireland	N.A.

Italy (ANTI)	The rules are set out in the law. In particular, they were approved by the Law No 212/2000 of 27 July 2000, the so-called Italian Taxpayer's Bill of Rights ("Statuto dei diritti del Contribuente").
Poland	Polish government is working on the Tax Payer Charter, the proposal can be found here.
Slovakia	There is no Charter in place. Any such Charter would be an administrative statement only.
Spain (AEDAF)	Taxpayer´s rights and obligations are set out in two laws: General Tax Law (Law 58/2003 provisions 34 and 99) and Common administrative procedure of Public Administrations Law (Law 39/2015 provisions 13 and 14).
The Netherlands (NVAB)	No.
The Netherlands (NOB)	No.
United Kingdom	There is a legal requirement to have a Charter and for its content to be published.

3. If neither are the equivalent taxpayer rights set out in various parts of your legal system? Please provide details.

Austria	In addition to the above, protection of certain fundamental rights are also provided by the constitution (e.g. right of fair trial and right of due procedure; protection against arbitrary interpretation of tax laws, etc). When a taxpayer's constitutional rights are infringed he can appeal to the Constitutional Court.
Belgium	In addition to the previous answers, there are fundamental rights contained in the Belgian Constitution. So as such the rights of the Belgian tax payer is reasonably protected.
Croatia	N.A.
Czech Republic	See answer 2.
Ireland	Certain rights such as the right to appeal and the right to privacy are clearly set out in law. Other rights, for example the right to efficient and effective administration, are not defined in legislation.
Italy (ANTI)	In addition to the Tax Payer's Bill of Right, there are also other fundamental rights provided by the Italian Constitution and other laws, such as: "The Italian Administrative Procedure Act" (Law No. 241 dated August 7, 1990); "Consolidated laws and regulations on administrative documentation" (Presidential Decree No. 445 dated December 28, 2000); "Code of conduct for employees of public administration" (Presidential Decree No. 62 dated April16, 2013). Furthermore, we may find some general principles in the Italian Constitution (e.g. principle of equality) and some other principles developed over the years, for example within the European scenario or by the Italian and international case law, such as the principle of legitimate expectations or the principle of legal certainty.

Poland	Certain rights of a taxpayer a tax charter indicates are guaranteed by other existing tax regulations e.g. the Tax Ordinance.
Slovakia	The Tax Administration Act contains basic principles of tax administration and detailed tax administration rules which are also aimed at protection of taxpayer's rights.
Spain (AEDAF)	Taxpayer´s rights and obligations are set out by law.
The Netherlands (NVAB)	Taxpayer's rights are codified in various laws, such as the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht (AWB)) that applies to all administrative procedures in general, and in the General State Taxes Act (in Dutch: Algemene wet inzake rijksbelastingen (AWR)). Moreover, taxpayer's rights follow from policy rules such as the Administrative Fines Decree (Besluit Bestuurlijke Boetes Belastingdienst) and the Decree on Tax Administrative law (Besluit Fiscaal Bestuursrecht). In addition to that, various legal and non-legal principles have developed over the years, such as the principle of legitimate expectations, the fair play principles, the principle of equality, the principle of due care and the principle of legal certainty. Lastly, taxpayers can invoke the rights that derive from human rights conventions, most importantly the European Convention of Human Rights and the Charter of the European Union.
The Netherlands (NOB)	Yes. Taxpayers rights are set out in legislation, mainly in the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) and the General State Taxes Act (in Dutch: Algemene wet inzake rijksbelastingen). Moreover, the taxpayer may invoke rights from policy rules published by the Ministry of Finance. In case law the Supreme Court has developed various general principles of good governance, such as the principle of legal expectation and the fair play principle, which can be invoked by the taxpayer in court proceedings.
United Kingdom	N.A.

4. Or are they set out in some other format? Please specify.

Austria	N.A.
Belgium	Not applicable.
Croatia	N.A.
Czech Republic	See answer 2.
Ireland	The Irish Revenue Commissioners (Revenue) has published a Customer Service Charter, which sets out the rights and respective responsibilities of taxpayers and Revenue.
Italy (ANTI)	N.A.
Poland	-
Slovakia	Besides Tax Administration Act, the Financial Authorities published a one-pager of ethics code for tax administrators. However, the document is very

	vague, not used in practice and rather serves as a formal proclamation.
Spain (AEDAF)	N.A.
The Netherlands (NVAB)	No.
The Netherlands (NOB)	No.
United Kingdom	N.A.

5. Please provide a link to the Tax Charter or the equivalent provisions.

Austria	Link to the "BAO".
Belgium	Not applicable.
Croatia	Link.
Czech Republic	§ 5-9 of the Tax Code (it´s available only in Czech).
Ireland	The Revenue Customer Service Charter is available here.
Italy (ANTI)	Link.
Poland	Link.
Slovakia	N.A.
Spain (AEDAF)	General Tax Law and Common administrative procedure of Public Administrations Law.
The Netherlands (NVAB)	N.A.
The Netherlands (NOB)	N.A.
United Kingdom	Link.

6. Is there a body which oversees the performance of the tax administration by reference to the Tax Charter?

Austria	In case the tax administration is infringing the rights of the taxpayer, he can file a complaint with the Federal Tax Court and eventually with the Supreme Administrative Court ("Verwaltungsgerichtshof") or - in case of infringment on a constitutional right - with the Constitutional Court ("Verfassungsgerichtshof"). The Ministry of Finance is also overseeing the tax administration for compliance with the law and effectiveness of procedure. There is also an internal Ombudsman provided by the Ministry of Finance to assist taxpayers in protecting their rights.
Belgium	The judicial system plays partially this role by judging disputes between taxpayers and tax administrations, but with respect specifically to the performance of the tax administration, apart from procedures of internal control, there is no separate body specifically charged with the oversight of the performance of such tax administration. In some cases, the Tax Conciliation Unit, referred to above, can intervene when the dispute is still at administrative level. Via the report of the Tax Conciliation Unit (see point 8) there is a direct feedback to the government and indirect to the parliament on the performance of the Tax Administration.

Croatia	Yes.
Czech Republic	The tax administration has a duty to respect taxpayers' fundamental rights. A taxpayer can take legal action against a violation of his fundamental rights to court. The taxpayer can also complain to the Ombudsman but he isn´t specialised in the rights of the taxpayer.
Ireland	No.
Italy (ANTI)	The judicial system plays a major role in the disputes between Taxpayers and Tax Administrations. Taxpayers, who believe that their right have been violated by the Tax Administration, can take legal actions against the latter before the competent court. In addition, article 13 of the Italian Taxpayer's Bill of Rights sets up a monocratic body in charge of the protection of taxpayers' rights, Taxpayer's "Watchdog" ("Garante del contribuente").
Poland	There is no specialized office in this scope, it is assumed that overseeing is in the scope of activity of the Ombudsman.
Slovakia	N.A. Performance of particular tax authorities is overseen by the Financial Directorate. Performance of the financial authorities as a whole is overseen by courts.
Spain (AEDAF)	In Spain, the Council for the defense of the taxpayer (Consejo para la defensa del contribuyente) is responsible for collecting the complaints that the taxpayers send, and tries to resolve them. Nevertheless, the resolutions of the Council do not recognize individual rights. On the other hand, the administrative appeals procedure and the judicial procedure, help the taxpayer to defend his rights.
The Netherlands (NVAB)	No.
The Netherlands (NOB)	No.
United Kingdom	Yes. It is now known as the Customer Experience Committee. It was first known in 2009 as the Charter Advisory Committee and its name was subsequently changed to Charter Committee.

7. If so, is the body within, or outside, the tax administration?

Austria	The Tax Court, Supreme Administrative Court and Constitutional Court are outside the tax administration.
Belgium	Within (Tax Conciliation Unit) and outside (Courts) – see answer to question 6.
Croatia	Inside in second instance, in third instance: Administrative Court.
Czech Republic	The court and the Ombudsman aren´t part of the tax administration.
Ireland	N.A.
Italy (ANTI)	The body is outside the tax administration.
Poland	Outside the tax administration.
Slovakia	Financial Directorate – within tax administration. Courts – outside tax administration.

Spain (AEDAF)	The Council for the Defence of the Taxpayer (CDC) is integrated in the Ministry of Finance. More information here.
The Netherlands (NVAB)	No.
The Netherlands (NOB)	N.A.
United Kingdom	The Committee is a sub-committee of the HMRC Board but there is a requirement for a majority of its members to be non HMRC people.

8. Does the body provide public reports on the Tax Charter?

Austria	All decisions be the Federal Tax Court (including those decisions that deal with perceived infringement of taxpayers rights) are published.
Belgium	The Tax Conciliation Unit is issuing an annual report that is available to the public. With respect to the Courts, there are no public reports but cases of jurisprudence are published according to the relevant rules.
Croatia	No.
Czech Republic	Some information about taxpayer right we find on the website but not on the website of the tax administration. So the judicial decisions are important in this field and these decisions are mostly public. The ombudsman publishes general annual reports.
Ireland	N.A.
Italy (ANTI)	According to article 13, para 12, of the Italian Taxpayer's Bill of Rights, the Taxpayer's Watchdog, in light of the warnings received and activities performed, shall submit a biannual report to several bodies of the tax administration. As per para 13-bis of the above-mentioned article, the Taxpayer's Watchdog provides the Government and Parliament with a yearly report that includes data and information on the status of the relationships between tax authority and taxpayers.
Poland	No.
Slovakia	Financial Directorate publishes annual report on its activity - this is however not related specifically to taxpayer's rights.
Spain (AEDAF)	Yes, the Council issues an annual report. Pleases see Annual Report 2017.
The Netherlands (NVAB)	No.
The Netherlands (NOB)	N.A.
United Kingdom	Yes – it is required to do this by Statute.

9. Please provide a link to the latest report if it is accessible on the internet?

Austria	Here is the link to the Annual Report (covering all decisions both material tax law as well as tax procedural law) of the Federal Tax Court.

Belgium	The annual reports of the Tax Conciliation Unit are available on the internet namely in English (till 2013) – more recent years are available in Dutch, French and German.
Croatia	N.A.
Czech Republic	The website of the Ombudsman.
Ireland	N.A.
Italy (ANTI)	The yearly reports of the Taxpayer's Watchdog can be found here.
Poland	-
Slovakia	N.A.
Spain (AEDAF)	Link.
The Netherlands (NVAB)	N.A.
The Netherlands (NOB)	N.A.
United Kingdom	The 2018 report.

Tax Charter – General

10. Please provide information on the general working of the Taxpayer Charter and links to any published reviews.

Austria	The taxpayers rights as stipulated in the CFE Tax Charter are effectively protected by law and the Federal Tax Court, the Supreme Administrative Court ("Verwaltungsgerichtshof") and the Constitutional Court ("Verfassungsgerichtshof"). Also the Chamber of Tax advisors ("Kammer der Steuerberater und Wirtschaftsprüfer") is regularly communicating observed deficiencies or procedural infringements to the Ministry of Finance.
Belgium	With respect to the Tax Conciliation Unit, reference is made to the relevant website – English version
Croatia	N.A.
Czech Republic	The Chamber of the Tax Advisers of the Czech Republic publishes information from the CFE (and also link to the website of CFE) and the employee of the Chamber attends international conference Taxpayer Rights and he prepares information from this conference for the tax advisers in Bulletin of the Chamber.
Ireland	Revenue's Customer Service Charter outlines taxpayer's basic rights and responsibilities in dealing with Revenue. It covers topics such as a taxpayer's right to consistency, equity and confidentiality, the presumption of honesty and Revenue's endeavour to administer tax in a manner that minimises compliance costs. The Institute is not aware of published review of the Customer Service Charter.
Italy (ANTI)	Link.
Poland	General information about Charter assumptions can be found here: 1, 2, 3.
Slovakia	N.A.
Spain (AEDAF)	N.A.
The Netherlands (NVAB)	N.A.

The Netherlands (NOB)	N.A.
United Kingdom	See following answers.

Complaints

11. Is there a procedure for making complaints?

Austria	Where the Tax Administration has violated the statutory rights of the taxpayer or did not follow the proper procedure an appeal can be filed against the tax assessment with the Federal Tax Court. The taxpayer can also lodge an informal disciplinary complaint with the Ministry of Finance in case he is being treated in a harassing or unfair way.
Belgium	Yes, there are rules in the various Tax Codes and if the dispute is brought in front of the Courts, the Judicial Code is applicable. In addition, reference is made to the Tax Conciliation Unit referred to above.
Croatia	Yes, for those rights/obligations set out in the tax law there is a possibility to file an objection, followed by an appeal to second instance by the Tax Authorities and in third instance by the Administrative court.
Czech Republic	The procedure is set out in the Tax Code and in the law about judicial procedure.
Ireland	Yes, Revenue has published procedures: *Revenue Complaint and Review Procedures Leaflet* which is available here.
Italy (ANTI)	Yes, there is. Taxpayer may submit complaints regarding malfunctions, irregularities, irregular or unreasonable administrative practice or any other behaviors that may damage the trusty relationship between citizens and tax authority to the Taxpayer's Watchdog.
Poland	Yes.
Slovakia	There is a general Act on Complaints based on which it is possible to file complaints also in tax administration area.
Spain (AEDAF)	Taxpayers can file complaints through the Taxpayer Defense Council, about the behaviour of the Tax Administration. Specific procedures exists for filing administrative appeals, and administrative complaints against the acts of the tax administration, prior to the Court procedure.
The Netherlands (NVAB)	Yes.
The Netherlands (NOB)	Yes, for those rights/obligations set out in the tax law there is a possibility to file an objection against a limited number of decisions by the tax authorities, such as assessments, followed by an appeal to the lower and higher tax court and the Supreme Court. For other complaints an appeal to the civil courts or to the National Ombudsman is possible.
United Kingdom	You can complain to the people you are dealing with in HMRC and then have a separate, Stage 2, review by HMRC staff not involved in your case. If you remain

	unsatisfied you can then take your case to the Tax Adjudicator.

12. How are complaints dealt with within the tax authority in your country? Please distinguish between complaints about the behaviour of the tax authority and dealing with differences of opinion about the handling of the law.

Austria	Differences of opinion about handling of the tax law or behavior of the tax administration in violation of its legal obligations can be addressed through the ordinary legal remedies and proceedings, e.g. lodging an appeal with the Federal Tax Court. Other complaints about the behavior of the tax authority can be made to the Ministry of Finance, to the Ombudsman within the tax administration or with the external Austrian Ombudsman Board ("Volksanwaltschaft").
Belgium	For complaints about the behavior of the tax authorities, a complaint can be filed with the Tax Conciliation Unit (see above). The taxpayer can also sue the Tax Authorities in front of the Court on the basis of general principles, such as the motivation of acts, the principles of good administration, etc. For differences of opinion about the handling of the law, there is a formal procedure foreseen in the Tax Codes and if relevant, the case may be escalated to the Courts through the Judicial system.
Croatia	See answer 13.
Czech Republic	In general, they are complaints about a fair trial under the law.
Ireland	To raise a compliant with Revenue, the taxpayer must first raise a formal complaint with the tax office that handled their affairs. If the complaint cannot be resolved at this level, the taxpayer can escalate their complaint to the District or Divisional manager. If the taxpayer is dissatisfied with the outcome they can request that their case is considered by an internal or an external reviewer. The external reviewer is not a Revenue official. He/she is an independent party selected from a panel of external reviewers, who are hired by Revenue. The complaints process outlined above deals primarily with matters concerning Revenue behaviour or the handling of a taxpayer's case. Matters concerning interpretation of tax legislation or disagreement over the facts of a case are dealt with by the Tax Appeals Commission (TAC). This is a separate body, independent of Revenue, established under statute. A taxpayer who wishes to have a matter determined by the TAC, must submit a Notice of Appeal directly to the TAC. The appeal will then be determined by way of a hearing or by adjudication.
Italy (ANTI)	Claims on malfunctions or not compliance with the undertakings provided by the so-called "Carta dei servizi" of the Revenue Agency may be submitted to the Revenue Agency by filing a claim form available

	online. Any other cases shall be submitted to the judicial authority.
Poland	Complaints can be submitted regarding the actions of the tax authorities under the rules set out in the Tax Ordinance. The final decision of the tax authorities as a rule can be questioned by the taxpayer before an administrative court. There is appealing procedure determined by law.
Slovakia	Opinions on tax law – disputes arise as a result of tax audits. Decision of the tax authority issued based on tax audit can be appealed to the Financial Directorate. Decisions of the Financial Directorate can be reviewed by courts. The Ministry of Finance has limited competences to review decisions of the Financial Directorate outside of regular appeal procedure. Behavior of the tax authority – a general Act on Complaints apply. Complaint is filed with the respective superior authority. Complaints against the Financial Directorate are dealt with by the Government Bureau. General – courts also decide on complains/legal actions about inactivity of the tax authority or against 'measures' of the tax authority (other than decisions) affecting rights of taxpayer. Once all regular appeal measures are used, taxpayer can also file a complaint regarding the breach of fundamental rights with the Ombudsman. Ombudsman office publishes annual report; however, based on information available the office does not deal with complaints in tax area or such complaints are rather rare.
Spain (AEDAF)	i) Complaints about the behavior of the tax authority - Taxpayer Defense Council deals with the complaints about the behavior of the Tax Administration, through the filing of a complaint. It is a body under the Ministry of Finance. ii) Claims or appeals for differences of opinion about the handling of the law - Regarding complaints about differences or discrepancies in the interpretation of the Law, there is an administrative complaint procedure before the body that issued the act. Subsequently, it can be appealed before the Economic-Administrative Courts, also under the Ministry of Finance. The resolution of Economic - Administrative Courts give an end to the administrative procedure. The next instance to appeal would be the Courts of justice.
The Netherlands (NVAB)	Within the Dutch Tax Authority (in Dutch: Belastingdienst), taxpayers can complain about both the behavior of the authorities and the handling of the law. Complaints about the behavior of the Dutch Tax Authority can be filed with the authorities both orally (by phone) and written, either by filing a complaints form which is available online or by sending a letter. Differences of opinion about the handling of the law can be tackled through the system of legal remedies. If a taxpayer disagrees with a decision of the Dutch Tax Authority (such as tax assessments, refund decisions and any other decisions against which legal remedies are available), he can submit an objection, which will

	be dealt with by another tax inspector than the one who made the decision. If the tax payer does not agree with the decision on the objections, he has the right to appeal against the decision before the court.
The Netherlands (NOB)	The taxpayer can complain about behaviour of the tax authorities by filing a complaint within the Tax Authorities and with the National Ombudsman. Discussions about handling of the tax law, such as tax assessments, are dealt with through legal remedies by filing objections against assessments, followed by court proceedings at the lower and higher tax courts and the Supreme Court.
United Kingdom	At the initial stage there is unlikely to be a distinction between the tax related issues and the way the case has been handled. Disputes about the law are likely to be "escalated" through the judicial system to the Tax Tribunals (First Tier and Upper Tribunal) and then to the general court system: Court of Appeal and Supreme Court. Complaints about the handling of the case, if not sorted out with the tax authority, HMRC, may go to the Tax Adjudicator.

13. Is there a separate organisation outside the tax administration to handle those complaints, if they cannot be resolved by the tax authority?

Austria	See answer to question 12. The Austrian Ombudsman Board ("Volksanwaltschaft") can deal with all administrative acts of government authorities, including also the tax administration.
Belgium	See answer to question 12.
Croatia	Not outside the tax administration.
Czech Republic	The courts and the Ombudsman are outside the tax authority.
Ireland	Ireland has a general Ombudsman's Office. This office deals with complaints from members of the public who believe they have been unfairly treated by certain public service providers. Complaints about Revenue can be raised with the Ombudsman. As outlined in question 12, the Tax Appeals Commission is an independent body which determines matters concerning interpretation of tax legislation or where there is disagreement on the facts in a case, to determine the quantum of tax due (or the amount to be refunded).
Italy (ANTI)	Yes, the Taxpayer's Watchdog.
Poland	No.
Slovakia	Complaints against the Financial Directorate based on Act on Complaints are dealt with by the Government Bureau.
Spain (AEDAF)	Only Courts of justice are allowed to resolve claims or remedies for differences of opinion about the handling of the law after at least 6 years to terminate the administrative procedure.

The Netherlands (NVAB)	Yes, there is. Taxpayers can choose between one of three different institutions. The most common way is to file a complaint with the National Ombudsman. The ombudsman only handles complaints that have first been lodged with the Dutch Tax Authority itself. Instead of going to the ombudsman, tax payers could also turn to the Committee on Petitions and Citizens' Initiatives of the Dutch House of Representatives (in Dutch: de Commissie voor de Verzoekschriften en Burgerinitiatieven uit de Tweede Kamer) or to the Committee on Petitions of the Dutch Senate (in Dutch: de Commissie voor de Verzoekschriften uit de Eerste Kamer), if they are not satisfied with the handling of the complaint by the Dutch Tax Authority.
The Netherlands (NOB)	Complaints about behaviour are dealt with by the National Ombudsman. Most common is to file complaints with the National Ombudsman after lodging a complaint within the Tax Authorities. It is also possible to file complaints with the Second and First Chamber of the Dutch parliament.
United Kingdom	Tax Adjudicator. There is also a more general Parliamentary Ombudsman but tax complaints are most likely to go to the Tax Adjudicator.

14. Does the complaints organisation have other powers e.g. to investigate systemic issues within the tax administration? Please provide details.

Austria	The external Ombudsman Board ("Volksanwaltschaft") has broad investigative possibilities to review the acts of all administrative authorities including the tax administration, secured by law. Link. In case there is a systemic issue the Chamber of Taxadvisors ("Kammer der Steuerberater und Wirtschaftsprüfer") can bring the issue to the attention of the Ministry of Finance in its regular meetings with the MoF.
Belgium	For the Tax Conciliation Unit, no, not to the Institute’s knowledge.
Croatia	No.
Czech Republic	The court (especially the Supreme administrative court) adopts interpretative opinions that must be followed by the tax administration. The Ombudsman makes recommendations to the administration.
Ireland	No.
Italy (ANTI)	The Taxpayer’s Watchdog addresses requests of documents, clarifications and recommendations to the tax authority. The Taxpayer’s Watchdog has the power to access the tax offices and check the functionality of the assistance and information services for the taxpayer.
Poland	-
Slovakia	There is no such competence of the Government Bureau. In specific situations, the MPs can investigate systematic issues (not individual complaints).
Spain (AEDAF)	In the field of claims for management's behavior, the Taxpayer Defense Council can make suggestions about

	normative and operational spheres of the Tax Administration. In the field of complaints or remedies for differences of opinion about the handling of the law, there is no power to investigate systemic issues within the tax administration.
The Netherlands (NVAB)	Yes, apart from handling complaints, the National Ombudsman can also investigate the actions of all parts of the government on his own initiative, including the Dutch Tax Authority. The ombudsman has various investigative powers to that end, such as hearing witnesses under oath. People and organisations are obliged to cooperate with the ombudsman's investigation. Most of the advices and reports from the National Ombudsman are publicly accessible online.
The Netherlands (NOB)	The courts have the possibility to ask for information. The National Ombudsman has broad investigative possibilities, secured by law.
United Kingdom	The Service Level Agreement of the Tax Adjudicator. The core purposes of the Tax Adjudicator are: resolve complaints by providing an accessible and flexible service and make fair and impartial decisions; support and encourage effective resolution throughout the complaints handling process; and use insight and expertise to support HMRC to learn from complaints and improve services to customers.

15. Does the complaints organisation make an annual report of its activities?

Austria	The external Ombudsman Board: yes. The internal ombudsman: no. Federal Tax Court: yes
Belgium	For the Tax Conciliation Unit, yes, see above: an annual report is published.
Croatia	No, there is only independent public research report (eg. 2016).
Czech Republic	The Ombudsman makes the annual report. The tax authority makes the annual report also but this report doesn´t contain any part about the taxpayer rights.
Ireland	The Ombudsman publishes an Annual Report. The Tax Appeal Commission also publishes an Annual Report.
Italy (ANTI)	Yes.
Poland	-
Slovakia	No.
Spain (AEDAF)	Tax administration bodies and the administrative Economic Courts carry out annual statistics and issue annual reports.
The Netherlands (NVAB)	Yes.
The Netherlands (NOB)	The National Ombudsman does. Also the tax administration publishes an annual report which entails statistics regarding administrative complaints and outcome.
United Kingdom	Yes. The next report is expected for June 2019. Link to the 2018 report can be found in the next answer.

16. Please provide a link to latest report if it is accessible on the internet?

Austria	External Ombudsman Board and Federal Tax Court.
Belgium	See answer to question 9.
Croatia	N.A.
Czech Republic	The report of the Ombudsman & The report of the tax authority.
Ireland	The Tax Appeals Commission Annual Report for 2018 is available here. The Ombudsman's Annual Report for 2018 is available here.
Italy (ANTI)	See answer to question 9.
Poland	-
Slovakia	N.A.
Spain (AEDAF)	Reports of the Administrative Economic Courts.
The Netherlands (NVAB)	Annual report 2018 of the National Ombudsman (in Dutch). Attachment of numbers of complaints in 2018 (in Dutch).
The Netherlands (NOB)	Link.
United Kingdom	The 2018 report.

17. How many complaints are made each year? Within the tax authority itself and to the outside body.

Austria	No information.
Belgium	These details are not readily available because there are not, to our knowledge, detailed statistics per nature of files dealt with by the Courts. For the Tax Conciliation Unit, in 2017, about 5.000 new complaints files were opened. Link to the 2017 report French version (not yet available in English).
Croatia	No information.
Czech Republic	The Chamber doesn't know this statistic.
Ireland	It is unclear how many complaints are made by taxpayers to their local Revenue office (the first stage of the complaints process), as these figures are not available. The number of requests for an external and internal review are relatively small – 13 in total in 2018. The Ombudsman received 94 complaints in relation to Revenue in 2018. The Tax Appeals Commission received over 1,600 appeals in 2018. It has received over 4,000 new appeals, in total, since it was established in February 2016.
Italy (ANTI)	According to the most recent report, published on December 14, 2017, the Taxpayers' Watchdog has managed 4687 new complaints during the year 2016.
Poland	No data is available.
Slovakia	Information is not available. Based on our experience, these complaints are however very unusual in practice.
Spain (AEDAF)	In 2017 the number of complaints before Regional Administrative Economic Courts in first instance was number of 186,668, and, in second instance (Central Economic Court) number of 7.611. Therefore, a total

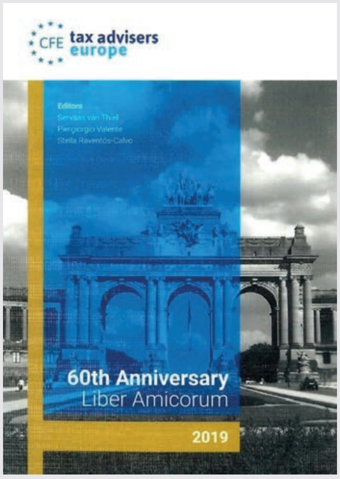
	of 194,279 claims. The number of complaints filed before the Council for the Defense of the Taxpayer was 10,951 in 2017.
The Netherlands (NVAB)	The number of complaints that were filed with the Dutch Tax Authority itself over the last 3 years: 2018 – 12.393 2017 – 11.145 2016 – 13.106 The number of complaints made to the National Ombudsman concerning the Dutch Tax Authority over the 3 few years: 2018 – 3.338 2017 – 3.799 2016 – 6.006
The Netherlands (NOB)	No answer.
United Kingdom	About 1,000 complaints are made to the Tax Adjudicator each year and there were about 300 complaints unresolved at the latest count.

18. Please provide a link to the most recent annual report of your tax authority.

Austria	Link.
Belgium	See answer to question 17: annual report 2017 issued by the Tax Conciliation Unit.
Croatia	N.A.
Czech Republic	It is available only in Czech.
Ireland	Revenue's Annual Report for 2018 is available here.
Italy (ANTI)	The most recent report was published on December 14, 2017 by the Italian Ministry of Economy and Finance. The report concerns the activity carried out in 2016 and is available here.
Poland	-
Slovakia	N.A.
Spain (AEDAF)	2017 annual report of the State Tax Administration Agency (AEAT).
The Netherlands (NVAB)	The most recent half-year report of 2018 (in Dutch). Annual Report 2018 of the APA/ATR-team (Advance Pricing Agreements/Advance Tax Rulings) (in Dutch).
The Netherlands (NOB)	Second half-year report 2018 (in Dutch).
United Kingdom	The 2019 report will be published in July 2019. The 2018 report.

Books

CFE 60th Anniversary Book



CFE 60th Anniversary Liber Amicorum

CFE Tax Advisers Europe Books

In 2019 CFE Tax Advisers Europe published two books to commemorate its 60th Anniversary: a 60th Anniversary Book and a Liber Amicorum.

The CFE Anniversary Book aims to give an overview of the history and development of CFE Tax Advisers Europe and examines the unique contribution the organisation has made to ongoing discussions in the international tax world.

Valère Moutarlier, Director, Direct Taxation Tax Coordination, Economic Analysis and Evaluation, DG TAXUD, kindly wrote the Foreword to the CFE 60th Anniversary Book, reflecting on the next steps for EU tax policy within the framework of the new EU Commission Presidency.

Regarding the role of CFE in the EU tax policy context Mr. Moutarlier said:

> *"(...) CFE has been a prominent and constructive actor in the EU's tax arena for many years now. Its contributions to consultations, submission of well-researched position papers and its membership in the Platform on Tax Good Governance are just a few of the ways in which it has brought its views and ideas to our attention.*
>
> *This Commission relies heavily on vocal, active and knowledgeable stakeholders for well-informed policy-making and CFE certainly meets this description.*
>
> *As we move forward now, towards a new mandate and a renewed agenda for taxation policy in Europe, I am sure that CFE will continue to liaise closely with the Commission and make its mark."*

Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration of the OECD, wrote the Opening Remarks for the CFE 60th Anniversary Book, highlighting the long-standing collaboration between the CFE and the OECD.

On the CFE-OECD cooperation, Mr. Saint-Amans said:

> *"It is my great pleasure to deliver the OECD contribution to the 60th anniversary of the CFE. The collaboration between the CFE and the OECD is longstanding. The CFE has been actively following our work since its inception in 1959 - only a few years before the publication of the 1963 OECD Model Tax Convention. Up to 2008, the OECD delivered many projects as a standard setter in the field of international taxation; for example through many amendments to the OECD Model Tax Convention, the publication of the transfer pricing Guidelines in 1979 and in 1995 and subsequent amendment, and in many other areas (harmful tax practices, tax transparency etc.).(...)"*

In the Liber Amicorum, compiled in honour of the 60th CFE Anniversary, renowned tax experts discuss key tax issues that challenge tax advisers, tax academics and tax officials on a daily basis. The book comprises interesting and insightful discussions on EU decision-making in the tax area in a digital world; taxpayer rights; recent developments in the fight against tax avoidance and tax evasion; in-depth analysis of VAT and cross-border rulings; and non-tax issues that may have implications on international taxation and finance.

Both books are available for purchase from the CFE Office in Brussels.

Electronic Publications

Tax Top 5

The "Tax Top 5" is a weekly e-publication containing the most relevant tax news and tax policy developments from the EU institutions, EU courts and OECD from the previous week. The weekly updates are a great success and the Tax Top 5 is now perceived as

CFE tax advisers europe

Reports

CFE tax advisers europe

MEMBER ORGANISATIONS / OBSERVERS / STANDING GUEST IN 2019

CFE is an umbrella organisation representing the tax profession in Europe. On 31 December 2019, our members comprised 33 professional organisations from 26 European countries, representing more than 200,000 individual members, and 1 standing guest organisation from Uzbekistan. Our functions are to safeguard the professional interests of tax advisers, to assure the quality of tax services provided by tax advisers, to exchange information about national tax laws and professional law, and to contribute to the coordination of tax law in Europe.

AT Kammer der Steuerberater und Wirtschaftsprüfer (KSW)

BE Institut des Experts-Comptables et des Conseils Fiscaux / Instituut van de Accountants en de Belastingconsulenten

CH EXPERTsuisse

CZ Komora daňových poradců ČR (KDPČR)

ES Asociación Española de Asesores Fiscales (AEDAF)

Registro de Economistas de Asesores Fiscales (REAF)

FI Suomen Veroasiantuntijat ry (Association for Finnish Tax Professionals)

FR Institut des Avocats Conseils Fiscaux (IACF)

HR Hrvatska Komora Poreznih Savjetnika (HKPS)

IE The Irish Tax Institute (ITI)

IT Associazione Nazionale Tributaristi Italiani (ANTI)

Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC)

LU Ordre des Experts-Comptables (OEC)

LV Latvijas Nodoklu Konsultantu Asociacija

MT Malta Institute of Taxation (MIT)

NL Register Belastingadviseurs (RB)

De Nederlandse Orde van Belastingadviseurs (NOB)

PL Krajowa Izba Doradców Podatkowych (KIDP)

PT Associação Portuguesa de Consultores Fiscais (APCF)

RO Camera Consultanţilor Fiscali (CCF)

SI Zbornica Davcnih Svetovalcev Slovenije (ZDSS)

SK Slovenská komora danových poradcov (SKDP)

SM Ordine dei Dottori Commercialisti e degli Esperti Contabili (ODCEC)

UA The Union of the Tax Advisers of Ukraine

UK The Chartered Institute of Taxation (CIOT)

Tax Faculty – Institute of Chartered Accountants in England and Wales (ICAEW)

Observers:

LT Association of Lithuanian Tax Advisers

ME Institute of Accountants and Auditors of Montenegro

NL De Nederlandse Vereniging van Advocaten-Belastingkundigen (NVAB)

RS The Association of Tax Advisors of Serbia

RU Palata Nalogovych Konsultantov (Chamber of Tax Advisers)

SI Tax Advisory Chamber of Slovenia (DSZS)

Standing guest:

UZ The Chamber of Tax Advisors of Uzbekistan

CONTENTS





2019 AOTCA 부산 제 17회 총회 및 국제 조세 컨퍼런스



Signature
of the
Torino – Busan Declaration

Bert Zuijdendorp
Head of Unit for Company Taxation Initiatives
European Commission

It is a real honour to be invited to write the foreword to the CFE annual report on the occasion of the organisation's 60th anniversary. I congratulate CFE and your members on yet another productive year.

As 2019 draws to a close and a new European Commission takes office, it presents us a good opportunity to look back at the developments of the recent past and reflect.

While there was no EU agreement on a Digital Tax in 2019, the discussions and policy development continue in Brussels and Paris. Progress is being made towards reaching a global consensus and this will be built on in 2020. Negotiations also continued at a technical level on the Common Consolidated Corporate Tax Base, and the EU Finance Ministers agreed on the first major update to the EU list of non-cooperative jurisdictions in tax matters. The EU list has presented itself as one of the real success stories of the outgoing Commission and we can expect its influence on the international tax landscape to continue in the years to come.

Meanwhile our Member States have been busy transposing the large volume of tax law that was agreed within the EU in the past five years. By the end of 2019, they will have completed implementation of the Anti Tax Avoidance Directives and the Directive on Mandatory Disclosure Rules.

It appears that tax continues to be "front page" news, and judging from the political guidelines of the new Von der Leyen Commission, this shows no signs of changing anytime soon.

Looking forward, President Von der Leyen has made it clear that fair taxation will be a priority policy area for the new Commission. As indicated in the political guidelines, if there has not been a global agreement on digital tax, then we can expect further action at EU level. Our new tax Commissioner, Paolo Gentiloni, has also been entrusted with making the Directive for a Common Consolidated Corporate Tax Base a reality. This proposal, once agreed by the Member States, will provide businesses with a single rulebook to compute their corporate tax base in the European Union. Commissioner Gentiloni will work closely with Executive Vice-President Timmermans on the tax aspects of the European Green Deal. We can also expect to see stronger measures to deal with non-EU harmful tax regimes. In this regard, the EU list of non-cooperative jurisdictions in tax matters will continue to play an important role.

Finally, I would like to wish the CFE organisation and all of its members the very best in 2020. We look forward to continue to work closely together with you, and all our stakeholders, as we navigate this busy tax policy agenda together.

Bert Zuijdendorp

Head of Unit for Company Taxation Initiatives
European Commission

Massimo Miani
President, Consiglio Nazionale dei Dottori Commercialisti
e Degli Esperti Contabili (CNDCEC), Italy

I was honoured to be asked by the President of CFE Tax Advisers Europe, Piergiorgio Valente, to contribute to the CFE Tax Advisers Europe Annual Report for 2019 by writing a Foreword.

2019 has been a remarkable year of collaboration for the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili with CFE Tax Advisers Europe. We were thrilled to co-host the CFE General Assembly in 2019 together with the Associazione Nazionale Tributaristi Italiani (ANTI), at which CFE Tax Advisers Europe celebrated its 60th Anniversary with a series of events. These events included the inaugural Global Tax Advisers Platform Conference, the CFE General Assembly and CFE Technical Committee Meetings, held over three days in Torino, Italy, on 3 and 4 October 2019. We were also pleased to host the Welcome Reception at Il Palazzo Della Luce, and the Gala Dinner at Villa Sassi, in very unique and historic destinations in Turin, both of which were extremely memorable events.

It was an honour for our organisation to have Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration present at the events we co-hosted, and to have him address the General Assembly on CFE and OECD collaboration. It was also a privilege to have Bert Zuijdendorp, Head of Company Taxation Initiatives, DG TAXUD, representing the European Commission at the events, discussing stakeholder collaboration with the EU, and the significant contributions CFE had made throughout the years.

In addition, this year CFE Tax Advisers Europe and the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili also entered into an important collaboration to co-produce online courses on topics concerning European and international taxation. These courses are available on an e-learning platform in Italy for CNDCEC members and have been a great success for our organisation. Further courses will be recorded in 2020, continuing this important collaboration with CFE Tax Advisers Europe and its CFE Academy.

The events of 2019 signalled to CNDCEC the importance of inclusive co-operation throughout the tax profession, and the very urgent need for a single representative voice of tax professionals in Europe. We thank CFE Tax Advisers Europe for its role in a very memorable and successful year for CNDCEC, and look forward to ensuring our two institutions will enjoy even further enhanced cooperation in the years to come.

Massimo Miani

President, Consiglio Nazionale dei Dottori Commercialisti
e Degli Esperti Contabili (CNDCEC), Italy

Piergiorgio Valente
President of CFE Tax Advisers Europe

New EU Beginnings

It is without any doubt that the Juncker Commission left behind a renovated landscape in the EU tax area. Similarly, it is largely agreed that the changes moved the state of play in the right direction.

The outgoing Commission was the Commission of the Base Erosion and Profit Shifting (BEPS) Project. While this has been an international initiative, its implementation at EU level in a coordinated manner has been a challenge on its own that required a series of legislative initiatives, including the Anti-Tax Avoidance Directive and amendments to the Directive on Administrative Cooperation in the field of taxation (DAC). In addition, the EU can boast that it exceeded and enhanced the international standard in the fight against BEPS and the promotion of good tax governance at global level, e.g. through the EU listing process.

Apart from BEPS, the outgoing Commission delivered important improvements in the field of international cooperation between the tax authorities of Member States. This was achieved through the widening of the scope of DAC, enabling new sources of information and ensuring that they reach all relevant tax authorities. The landscape looks indeed more transparent than ever before. Equally, tax dispute resolution has been enhanced beyond precedent with the adoption of the Directive on tax dispute resolution mechanisms. The important coordination in the VAT area is also in the positive side of the account with significant implications for the competitiveness of the Single Market.

Nevertheless, the outgoing Commission was far more ambitious. Evidence of this are two key initiatives that are pending and shall be for the next Commission to assess:

- The relaunch of the Common Consolidated Corporate Tax Base in a 2-step adoption process;
- The Digital Tax Package to address the issue of taxation of the digital economy in a coordinated manner across the Single Market.

Having in mind those goals which were met, and those which still are not, it is an appropriate time to consider EU taxation in the future.

For such an endeavor, due weight must be attached to the global context, the rising powers, the value of information, as well as to broad policy concerns, such as climate change. Three key areas can be identified as priorities:

- Tax certainty;
- Tax competitiveness;
- Interaction between tax and other policy issues.

First, tax certainty. Although it has been an acknowledged priority in in the last years, it can still not be taken as a given. In fact, it is commonly agreed that tax certainty is undermined in the EU. The number of fiscal State aid cases opened by the outgoing European Commission serves as an argument in this respect. Irrespective of the merit of the decisions taken by the Commission in the aftermath of its investigations, the result has been to cast doubt on Member States' decisions and practices established for the very purpose of strengthening tax certainty. Streamlining the fiscal State-aid front cannot but be a priority in the next years to improve certainty and predictability in the Single Market and build mutual trust between EU institutions and Member States. It is even more important in a tax landscape that is being overhauled around the world.

Second, the EU has always sought to increase the competitiveness of the tax environment and it has won many of the battles it has fought. Yet, the war is not over: the EU tax framework remains significantly fragmented, especially in the direct tax area. Further coordination is necessary to achieve this aim. Compromise is often the sole way to achieve progress.

Third, tax is a key parameter and incentive for the promotion of sustainable growth. It cannot and must not be viewed in isolation from broader policy areas or as an end in itself. Instead, it could and should be the means to incentivise the construction and maintenance of a sustainable environment where humanity can flourish. Indicatively, tax incentives for environment friendly technologies and/or practices could be used more widely at EU level, under the climate change threat.

To conclude, the new Commission shall inherit high standards and important responsibilities. In a controversial political and tax environment, it shall be called to take up the challenge to envision and shape the EU taxation of the future.

Geo-taxation and Digitalisation

Under the designation 'taxation of the digital economy' we are witnessing perhaps the most fundamental change in the design and modus operandi of the international tax system. This will modify the tax system largely based on a network of bilateral double taxation treaties, originally developed by the League of Nations in 1928. Whilst the tax treaties remain bilateral, the context in which we operate in is increasingly multilateral.

The current era is marked by a multitude of global players and by an unprecedented synergy of cooperation policies. The international tax governance network is obtaining new members: the OECD with the extended BEPS Inclusive Framework, and the UN Committee of Tax Matters. Other institutions who weigh-in on international tax policy debate are joining all of them. Such institutions are the World Bank, the International Monetary Fund, and the European Union. Increasingly, national tax authorities cooperate more closely at the international level by creating initiatives such as 'Tax Inspectors Without Borders', joint tax inspections and audits, and work together on multilateral advance pricing agreements. As a result, both the challenges and opportunities are increasingly globalised. This fast-paced change places enormous pressure on the tax profession, as well as the existing cooperation framework mechanisms and tax cooperation possibilities.

As a response to the globalised tax governance environment, I would like to promote the Global Tax Advisers Cooperation Platform (GTAP). GTAP was established by CFE Tax Advisers Europe, AOTCA and WAUTI, who collectively represent more than 600,000 tax advisers in Europe, Asia and Africa. GTAP is an international platform that seeks to bring together both national and international organisations of tax professionals from all around the world. GTAP serves a unique purpose: to encourage tax professionals to take up the challenge of proposing a new system. This system must be simple, flexible, fit for purpose, and able to reclaim taxpayers' confidence.

Piergiorgio Valente

President of CFE Tax Advisers Europe


Stella Raventós-Calvo, Wolfgang Mederer, Roberta Grappiolo and Eleftheria Psaraki


Elizabeth Brito, Jos Goubert, Isabelle Richelle and Jeremy Woolf


Fiscal Committee meeting in Torino


Fiscal Committee meeting in Brussels

Fiscal Committee

Overview

CFE's Fiscal Committee is comprised of two Sub-Committees: the Direct Taxes Subcommittee and Indirect Taxes Subcommittee, which focus on monitoring and responding to developments in tax policy and tax law at both European and international level. The Fiscal Committee aims to provide members with a cohesive view of the current state of affairs in tax policy by providing detailed analyses and updates concerning the work of the EU, OECD and UN.

Member and observer organisations nominate delegates who attend the Fiscal Committee's technical meetings and are contacted on a regular basis concerning developments in taxation policy. The views communicated to CFE by those delegates concerning the developments are then represented in CFE's opinion statements and outreach work in both European and international tax fora.

Activities

In 2019, the occurrence of the European elections posed an excellent opportunity for the CFE Fiscal Committee to reflect upon and identify the various tax policy issues which it considered to be most relevant to the interests of its members for the next Commission Mandate. Much of the Committtee's work focussed on prioritising future contributions to tax policy developments emanating from the EU Commission, OECD and UN. The means by which the Fiscal Committee carries out the work relating to its priorities include the following activities:

- Monitoring relevant tax policy developments at both European and international level;
- Reviewing legislative developments and monitoring progress within Member States on the implementation of tax reforms, particularly concerning the Anti-Tax Avoidance Directives of the European Commission;
- Distributing updates and questionnaires to delegates concerning tax matters of particular importance;
- Publishing Opinion Statements setting out the views of the Fiscal Committee on tax policy developments, many of which have been republished in leading tax journals in Europe;
- Engaging with European Commission, European


Gary Ashford


Fiscal Committee meeting in Brussels


Miriam Galandová and Anne Gunnell

Stella Raventós-Calvo and Wolfgang Mederer

Parliament and the OECD concerning tax policy developments and providing specific input setting out the views of members on these matters;

- Representing CFE Tax Advisers Europe at multiple taxation expert groups, including:
  - EU Platform for Tax Good Governance;
  - EU VAT Expert Group;
  - EU VAT Forum;
  - UN Committee of Experts in International Cooperation in Tax Matters.

Priorities

In 2019 the Fiscal Committee represented the views of members by engaging with the European Commission and OECD on relevant policy initiatives and matters of importance to the Committee, participated in various international expert groups, and issued publications and Opinion Statements.

Priorities of the Fiscal Committee in 2019 included:

Taxation of the Digital Economy

In February 2019 the OECD published a document outlining proposals agreed by the members of the Inclusive Framework on review of the international tax rules arising from the tax challenges of the digitalising economy. The document sets out a two-pillar approach for concurrent review of the nexus and profit allocation rules as well as other policy solutions to address the 'tax rate' arbitrage and the remaining BEPS challenges.

CFE responded by publishing an Opinion Statement strongly supporting the aim of a future-proof, longer-term reform of the international tax system to address the tax challenges of the digitalisation of the economy.

In October and in December 2019, the OECD Secretariat published proposals under Pillar 1 and Pillar 2 concerning its work to advance international negotiations to ensure large and highly profitable Multinational Enterprises, including digital companies, pay tax wherever they have significant consumer-facing activities and generate their profits. CFE has published two Opinion Statements setting out Member's views regarding the OECD Pillar One and Pillar Two proposals.

Monitoring and informing our members on the progress of the

EU proposals, further OECD developments and reviewing unilateral measures introducing national digital taxes were priorities for 2019 and will remain priorities in 2020.

The EU Commission's Qualified Majority Voting Roadmap

In January 2019, the European Commission published a communication which set 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, by utilising the Passerelle clauses contained in Article 48(7) and Article 192(2) of the Treaty on European Union, which allows the Council to change decision making from unanimity to qualified majority voting, whereby legislative proposals can become EU law if supported by a minimum number of EU countries, representing a minimum share of the EU population.

In its communication, the Commission stated that unanimity in tax decision making has hampered progress on important tax initiatives, needed to strengthen the Single Market and boost EU competitiveness, and identified the "cost" of non-action in EU Tax Policy as the failure to progress the VAT definitive regime, CCTB & CCCTB, the financial transactions tax and the digital services tax proposals.

At ECOFIN meetings in 2019, ministers called for keeping the current balance of voting rules in taxation, noting the considerable work achieved to date in EU tax legislative files under current rules. However, the issue has been flagged as a priority to progress for the incoming Commission. The Fiscal Committee will continue to monitor developments concerning this matter.

Monitoring ATAD Implementation

In 2016 the EU Commission first presented its proposal for an Anti-Tax Avoidance Directive as part of the Anti-Tax Avoidance Package. The provisions of the EU Anti-Tax Avoidance Directive (ATAD) eventually became applicable on 1 January 2019, which was the implementation deadline for national transposition legislation. The Directive contains five legally binding anti-abuse measures, which all Member States should apply against common forms of aggressive tax planning. The anti-abuse measures, apart from hybrid mismatches, include: CFC rules, switchover rules, exit tax rules, as well as GAAR and interest limitation rules.

In 2019, the Fiscal Committee produced a questionnaire on the Anti-Tax Avoidance Directives in order to collect information concerning the implementation of the directive in Member States. The Fiscal Committee intends to draft a further Opinion Statement on the questionaire results.

EU Tax Dispute Resolution Directive Enters Into Force

The Council Directive on tax dispute resolution mechanisms in the European Union entered into force on 1 July 2019. It will apply to complaints submitted from 1 July 2019 onwards on disputes relating to income or capital concerning the tax year commencing on or after 1 January 2018. The Directive will significantly improve the tax dispute resolution process; alleviate instances of double taxation and provide for a binding dispute resolution process with improved tax certainty for taxpayers. CFE has welcomed the developments with this Directive, and the topic was the subject of not only the Fiscal Committee's 2019 Forum, but also a significant focus in technical meetings in 2019. The Fiscal Committee will continue to monitor the issue, and publish a statement highlighting the elements of the Directive that merit further consideration, for the benefit of taxpayers and efficiency of the process.

Brodie McIntosh and Stella Raventós-Calvo

Fiscal Committee meeting in Brussels

EU Parliament – TAX3 & EU "Blacklist"

The European Parliament's Special Committee on financial crimes, tax evasion and tax avoidance (TAX3) was set up in March 2018, and in 2019 the Fiscal Committee monitored and updated delegates concerning the work carried out by the new inquiry committee.

TAX3 focused on tax avoidance and evasion related to the digital economy, circumvention of VAT, methods used in the EU tax blacklist of third-country tax havens, EU progress in removing harmful tax regimes, and the impact of double tax treaties. TAX3's report on the inquiry was presented in 2019, and will be

Indirect Taxes Subcommittee meeting in Torino

Indirect Taxes Subcommittee meeting in Brussels

the subject of an Opinion Statement of the Fiscal Committee. The Fiscal Committee also continued to monitor and update members concerning the work of EU Parliament carried out by way of maintaining the so-called "blacklist" of non-cooperative jurisdictions for tax matters.

Company Law Package

In December 2018 the EU Parliament's Legal Affairs Committee approved a draft report of amendments to the European Commission proposal on cross-border conversions, mergers and divisions, part of the so-called Company Law Package.

In 2019, political agreement was reached concerning the company law package and the package was voted through by Parliament. The directive will start applying 36 months after its entry into force and the Fiscal Committee will closely follow the developments of implementation, with the intention to produce an Opinion Statement on the topic.

VAT Action Plan Proposal Package

The indirect taxes subcommittee have continued to monitor progress on the proposals introduced by the EU in 2018 designed to implement the definitive VAT system as well as provide interim solutions for Member States for difficulties stemming from the transitional VAT system (that has been in place for more than 25 years).

The proposals included: a proposal to simplify VAT rules for SMEs, a proposal to reform VAT rates, a proposal to introduce quick fixes to address issues with the transitional VAT system, a proposal providing for enhanced administrative cooperation, a proposal providing for an interim reverse charge to be able to applied by Member States facing endemic carousel fraud, a proposal to align VAT rules for electronic and physical publications, and a proposal setting out the technical revisions required to existing EU VAT legislation in order to effect the proposed comprehensive revision.

Significantly, the proposal setting out simplification of VAT rules for SMEs, by way of introducing new simplified measures regarding invoicing, VAT registration, accounting and returns for SMEs acting both in wholly domestic markets and also cross-border across the EU has now been agreed at Council level. Discussions between Members States at the EU Council concerning the proposed directive as regards the introduction of the detailed technical measures for the operation of the definitive VAT regime system and in relation to the Commission's proposed Directives on reform of VAT rates are ongoing.

Analysis of the proposed legislation has been a priority of the Indirect Taxes Subcommittee in 2019 and will continue to be the focus of the Indirect Taxes Subcommittee in 2020.

Publications & Tax Technical Work of the CFE Fiscal Committee

In 2019, the Fiscal Committee of CFE Tax Advisers Europe published three Opinion Statements, one joint Statement with the Global Tax Advisers Platform (GTAP) and two joint Statements with the Professional Affairs Committee:

- **Opinion Statement FC 1/2019** CFE Response to the OECD Consultation Document: Addressing the Tax Challenges of the Digitalising Economy.
- **Opinion Statement FC 2/2019** concerning the implications of the decision of the Court of Justice of the EU in case C-132/16 *Iberdrola* on input tax deductions.
- **Opinion Statement FC3/2019** on the Commission consultation on amending Directive 2006/112/EC, as regards provisions relating to distance sales of goods and certain domestic supplies of goods;
- **Opinion Statement CFE/GTAP** on the OECD Consultation on Draft Report on Tax Morale (2019).
- **Opinion Statement CFE 1/2019** on European Tax Advisers' Policy Priorities for the EU Mandate 2019-2024.
- **Opinion Statement CFE 2/2019** on the OECD Consultation on a Unified Approach under Pillar One.

Opinion Statement CFE 3/2019 on the OECD

Consultation on a Unified Approach under Pillar Two.

Stella Raventós-Calvo, Sami Koskinen, Wim Gohres and Aleksandar Ivanovski

Ian Young, Wim Gohres, Heather Brehcist and Alistair Cliff

Professional Affairs Committee meeting in Brussels

Professional Affairs Committee meeting in Torino

Professional Affairs Commitee

Overview

The Professional Affairs Committee engages in the policy areas that concern and affect the exercise of the tax advisory profession. By way of submitting technical submissions and engaging with the European Commission and the OECD, the Professional Affairs Committee advances the CFE Board priorities that concern the tax advisory profession at large.

Apart from partaking in ongoing discussions with the EU Commission in different policy areas, the Professional Affairs Committee regularly responds to various EU and OECD questionnaires and also drafts technical updates of relevance for tax advisers which are aimed at informing the members of recent developments. In the past year, the Professional Affairs Committee has participated in various initiatives at EU and OECD level that aim to contribute to the ongoing policy debate and to voice the concerns of European tax advisers. The work of the Professional Affairs Committee broadly covers issues such as: ethics and professional codes, anti-money laundering, reporting of tax avoidance schemes, cooperation with tax authorities, digitalisation of tax services, taxpayers' rights, tax certainty, professional qualifications and regulation, liability and insurance, cross-border mobility, business structures of tax firms, client confidentiality and legal privilege.

Activities

Following the work of the European Commission and the OECD in more detail, the Professional Affairs Committee contributed to the ongoing policy discussion of relevance for tax advisers with tax technical comments in the form of opinion statements and policy submissions to the European Commission and the OECD, as well as through ongoing participation in meetings and activities of the European Commission, European Parliament and the OECD.

In 2019, the Professional Affairs Committee published the following Opinion Statements:

- **Opinion Statement PAC 1/2019** on the European Commission Draft Supranational Risk Assessment Report for Anti-Money Laundering Risks to Services Provided by Tax Advisers.
- **Opinion Statement CFE/GTAP** on the OECD Consultation on Draft Report on Tax Morale (2019).
- **Opinion Statement CFE 1/2019** on the Opinion Statement on European Tax Advisers' Policy Priorities for the EU Mandate 2019-2024.

- **Professional Affairs Committee Questionnaire** on the project Taxpayers' Rights and Charters.

Priorities

Anti-Money Laundering

The evolution of the EU anti-money laundering legislation is an ongoing priority for the Professional Affairs Committee. In 2019 CFE published an Opinion Statement on the EU Supranational Risk Assessment report concerning tax advisers, which is a response to the EU developments since the publication of the EU Commission SNRA for tax advisers. The draft SNRA, published in January 2019 suggested a high-risk environment for tax advisers and vulnerability to AML/TF. The CFE participated in a collaborative consultation with other relevant stakeholders on the effectiveness of the EU AML Directives, and during the consultation asked the EU Commission to consider why the risk for tax advisers has not been reduced compared to the initial risk assessments, despite legislative measures introduced over the years.

CFE Professional Affairs Conference 2019 in Paris

Additionally, the focus of the Professional Affairs Conference for 2019 was the new EU anti-money laundering rules that were introduced by the 5th Anti-Money Laundering Directive ("AML"), which Member States are obliged to transpose into national law by 10 January 2020. The Directive is based on FATF Recommendations and builds on other EU transparency initiatives to prevent money laundering. The AML Directive covers a variety of industries including tax advisory services and thus supports the OECD efforts in fighting money laundering by the Forum on Tax & Crime.

The conference examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion.

Taxpayers Rights and Obligations (Model Taxpayers' Charter)

In 2019, the CFE Professional Affairs Committee, together with the Global Tax Advisers Platform (GTAP), initiated a project on Taxpayers' Rights, led by Ian Young, former Direct Taxes Subcommittee Chair. CFE carried out a survey in order to find out some basic information about the way in which taxpayer rights and obligations are dealt with in CFE Member countries and how those countries deal with complaints about the way the tax system operates and affects the individual taxpayer.

The aim is to extend this survey to a global level, in collaboration with AOTCA, STEP and WAUTI, founding members of the GTAP. The Fifth International Taxpayer Rights conference will take place in May 2020 and by then CFE will have the results of the full CFE survey to showcase to attendees. CFE also published an Opinion Statement on the OECD Consultation on Draft Report on Tax Morale, where CFE stressed the importance of an equitable relationship between taxpayers and governments.

Mandatory Disclosure Rules

The Council Directive on mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements ("DAC6") entered into force on 25 June 2018, introducing complex mandatory disclosure rules for intermediaries across the EU. Members States had until 31 December 2019 to implement the Directive into domestic legislation, and disclosure requirements will apply to intermediaries from 1 July 2020. Given that all arrangements initiated after 25 June 2018 that fall within the scope of the Directive are reportable, there have been increased calls for the Commission to issue technical guidance to provide more clarity for tax advisers in the course of transposition of the directive.

The file was a priority for the Committee in 2019 and, to that end, CFE, together with the European Contact Group (ECG) and the European Group of International Accounting Networks and Associations (EGIAN), sent a joint letter addressed to the Director General of the European Commission, DG TAXUD, Stephen Quest, and members of Working Party IV. The letter encouraged the Commission and the Member States to continue their efforts to provide more guidance and clarification in the process of implementing DAC6 and welcomed the opportunity to actively contribute during consultations and meetings.

The Committee will conduct a survey concerning the implementation and practical reporting requirements of implementing legislation in 2020.

European Parliament Inquiries into Tax Evasion, Tax Avoidance and Financial Crimes

In 2019 the European Parliament presented the final report of the Special Committee "TAX3", initially formed in 2018, presenting the recommendations of the Committee following ten months of hearings concerning anti-money laundering and aggressive tax planning.

CFE was regularly in attendance at the parliamentary hearings and updated the Professional Affairs Committee concerning ongoing relevant developments in Parliament. The Professional Affairs Committee will monitor the uptake of any recommendations arising from the inquiries, and will follow ongoing developments in the European Parliament, in particular concerning the formation of any permanent tax inquiry committee.

Whistleblowers' Protection at EU
In 2019 the EU Council formally adopted new rules on whistle-blower protection across a wide range of sectors including public procurement, financial services, money laundering, product and transport safety, nuclear safety, public health, consumer and data protection.

The new rules will require the creation of safe channels for reporting both within an organisation - private or public - and to public authorities and Member States will have two years to transpose the new rules into their national law. The Professional Affairs Committee will monitor the implementation of the Directive in 2020.

Tax Technology Committee

Overview
The Tax Technology Committee (TTC) was established as a response to the manifest importance of digital taxation and technology and its applications in taxation both now and for the foreseeable future. In this regard, the TTC has a different approach to tax and technology, being devoted to digital transformation and all its ramifications for tax.

It is focused on the role professionals handling tax in all manifestations will have and the risks posed to them by the development of Artificial Intelligence and the direct interaction between taxpayer and revenue authorities.

Activities
With its activities initiated in January 2019, the Tax Technology Committee had three face-to-face meetings and three online meetings in 2019. The Tax Technology Committee has particular interest in the impact of digital systems on taxpayer rights and the role tax advisers will play in the process of digitalisation.

Priorities

Blockchain
Blockchain and cryptocurrency are known to be used for criminal purposes and money laundering, and this is a major problem for revenue authorities. The Tax Technology Committee focuses on the software developments that derive from Blockchain and how the software can be used for legitimate tax administration purposes.

Blockchain has the potential to become the best solution for the VAT gap issue as it enables the revenue to track money transactions. The Committee will closely follow developments in the area and report to delegates.

A paper on Blockchain and VAT is being drafted by the committee and will be published in 2020.

Taxpayer Rights in the Context of Digitalisation
With the advent of the digital economy, the necessity of a code preserving taxpayers' rights in a digital environment is apparent.

Address by Sami Koskinen, Fiscal Counsellor at the Permanent Representation of Finland to the EU & Presidency of the EU

Inaugural Tax Technology Committee meeting in Brussels

The issues of cross border exchange of information, data analysis by tax authorities and tax certainty in a digital world are crucial points to be debated by tax advisers.

To that end, the Tax Technology Committee will work jointly with the Professional Affairs Committee on the taxpayers' rights project, and on a code preserving taxpayers' rights in a digital environment.

Digital Security
Digital security is a key issue discussed by the Committee, especially regarding cross border transactions. The topic is very important for tax advisers with their work with financial information and supervising financial transactions.

In 2020, the Committee will continue to discuss digital security and security strategy.

Digitalisation of Tax Administrations
As more tax administrations go digital, countries are implementing new data submission and electronic auditing requirements,

Tax Technology Committee meeting in Torino

New Tax Professionals Committee meeting in Brussels

creating new sets of challenges for tax advisers. In 2020, the Tax Technology Committee will continue to monitor the developments on the digitalisation of tax administrations and report to its members.

NEW TAX PROFESSIONALS AD HOC COMMITTEE

The New Tax Professionals (NTP) Ad Hoc Committee was formally established during the CFE General Assembly held in Torino on 4 October 2019. The NTP Ad Hoc Committee was formed to represent new tax professionals from within CFE Tax Advisers Europe, allowing them to better understand how different Member Organisations work, promote relevant issues in their jurisdictions and build a cross-border network of the future generation of tax leaders.

The NTP Ad Hoc Committee will enable the representation of the views of newer members to the CFE, as well as facilitate the sharing of knowledge, information and experience between delegates within the CFE and the NTP. The NTP shall, in part, help provide potential future delegates and committee members for the CFE and Member Organisations, through helping to increase understanding of the CFE, and increasing the visibility of future leaders to those who are currently part of the CFE leadership.

The NTP will focus discussions on social mobility and D&I (Diversity & Inclusiveness); cross-border mobility; differences and similarities among tax systems; tax, ethics and morality. The Committee considers new tax professionals someone within their first 10-15 years of practice (or 10-15 years of membership of the Member Organisation).

ECJ Task Force

The CFE ECJ Task Force is a group of tax academics and renowned tax practitioners which meets regularly to discuss and issue opinion statements on selected decisions of the Court of Justice of the European Union. Since 2013, it has been chaired by Georg Kofler (CFE Tax Advisers Europe, Austria) and its current members are Alfredo Garcia Prats (Spain), Werner Haslehner (Luxembourg), Volker Heydt (EU, Belgium), Eric Kemmeren (The Netherlands), Michael Lang (Austria), Jürgen Lüdicke (Germany), João Félix Pinto Nogueira (IBFD, Portugal), Pasquale Pistone (IBFD, Italy), Emmanuel Raingeard de la Blétière (France), Stella Raventós-Calvo (CFE Tax Advisers Europe, Spain), Isabelle Richelle (CFE Tax Advisers Europe, Belgium), Alexander Rust (Austria, Germany) and Rupert Shiers (CFE Tax Advisers Europe, UK).

The ECJ Task Force generally meets four times a year for full-day meetings. It aims at analysing Court decisions with wide impact and providing high-level practical input to tax practitioners on selected judgments by the Court of Justice of the European Union through its Opinion Statements. In 2019, the following Opinion Statements (ECJ-TF) were issued:

- **Opinion Statement ECJ-TF 1/2019** on the CJEU decision of 31 May 2018 in Case C-382/16, *Hornbach-Baumarkt*, concerning the application of transfer pricing rules to transactions between resident and non-resident associated enterprises (= ET 2019, 446-452).
- **Opinion Statement ECJ-TF 2/2019** on the CJEU decisions of 26 February 2019 in Cases C-115/16, C-118/16, C-119/16 and C-299/16, *N Luxembourg I et al*, and Cases C-116/16 and C-117/17, T *Danmark et al*, concerning the "beneficial ownership" requirement and the anti-abuse principle in the company tax directives (= ET 2019 [in print]).
- **Opinion Statement ECJ-TF 3/2019** on the CJEU decision of 22 November 2018 in Case C-575/17, *Sofina* and others, on withholding taxes, losses and territoriality (= ET 2020 [in print]).
- **Opinion Statement ECJ-TF 4/2019** on the CJEU decision of 26 February 2019 in Case C-135/17, *X-GmbH*, on the German CFC rules and third countries.

These Opinion Statements are submitted directly to the European Institutions, disseminated to a wide audience of tax practitioners and academics throughout Europe and published in IBFD's "European Taxation" journal.

Moreover, the ECJ Task Force have been invited to prepare the EU Report on Subject 1 ("Reconstructing the Treaty Network") for the 2020 IFA conference in Cancun within the framework of the ECJ Task Force. Before that, the EU Report on Subject 1 ("Seeking anti-avoidance measures of general nature and scope – GAAR and other rules") for the 2018 IFA conference in Seoul was prepared within the framework of the ECJ Task Force and published in CDFI Vol. 103a (2018), pp. 61-93.

The ECJ Task Force and its members are also actively involved in the organisation of and as speakers at an annual conference at the University of Luxembourg. Topics over the last years have been "Landmark Decisions in Direct Tax Jurisprudence" (2014), "Primary Law Limits to Direct Taxation: Fundamental Rights, Fundamental Freedoms and State Aid" (2015). "EU Tax Policy in the 21st Century" (2016), "Time and Tax" (2017); "Tax and the Digital Economy" (2018); and "The Anti-Tax Avoidance Directive" (2019). Next year's conference will likely deal with dispute resolution in the area of taxation. The books containing the written contributions for the conferences are edited by Task Force Members Werner Haslehner, Georg Kofler and Alexander Rust together with Aikaterini Pantazatou (University of Luxembourg).

Bert Zuijdendorp, Piergiorgio Valente, Pascal Saint-Amans and Ian Hayes

Piergiorgio Valente and Aleksandra Heinzer

CFE Engagement

European Commission Platform for Tax Good Governance

The European Commission Platform for Tax Good Governance is a forum for expert representatives from business, tax professional and civil society organisations. The Platform is chaired by Director-General of DG Taxation and Customs Union, Stephen Quest. The Platform aims to facilitate a structured dialogue and exchange of views and expertise in order to achieve a more coordinated and effective EU approach to counter tax evasion and avoidance, to identify and remedy double taxation and to promote good tax systems in third countries.

CFE President, Piergiorgio Valente, and Chair of the Fiscal Committee, Stella Raventós-Calvo, participated as representatives of the CFE in 2019 at the Platform. The topics discussed in 2019 were technology and taxation, taxation of labour, environmental taxes, future proofing the EU taxation system & EU tax policy, co-operative compliance and tax competitiveness and competition.

EU VAT Forum

The EU VAT Forum offers a discussion platform where business and VAT authorities meet to discuss how the implementation of VAT legislation can be improved in practice. The CFE representatives for 2019 were Aleksandra Heinzer and Christian Amand. Issues examined in the course of the 2019 meetings included cross-border rulings, penalties and sanctions.

VAT Expert Group

The VAT Expert Group assists and advises the European Commission on VAT matters. The group is composed of individuals appointed in a personal capacity with requisite expertise in the area of VAT, and organisations representing particular businesses and tax practitioners that can assist in the development and implementation of VAT policies. The Chair and Vice Chair of the CFE Indirect Taxes Subcommittee, Jeremy Woolf and Trudy Perié, have recently been reappointed the CFE Tax Advisers Europe representatives to the group.

The focus of the VAT Expert Group in 2019 was on examining the "quick fixes" that come into force on 1 January 2020 and the proposals directed at imports of less than €150 that come into force on 1 January 2021. The CFE provided feedback to the Commission on the proposals by way of input at these meetings, as well as by elaborating on identified issues in its Opinion Statements and written representations to the Commission.

United Nations Tax Committee

The UN Committee of Experts in International Cooperation in Tax Matters (UN Tax Committee) now meets twice a year, in April in New York and in October in Geneva.

Roberta Grappiolo, Aleksandar Ivanovski and Wim Gohres

Wolfgang Mederer, Roberta Grappiolo and Eleftheria Psaraki

CFE applied for, and was granted, NGO (non-governmental organisation) status with the UN in 2006, and from 2006 until 2018 Ian Young, the then Chair of the CFE Direct Taxes Sub-Committee, represented CFE at the meetings of the UN Tax Committee. These meetings were originally held once per year but increased to twice per year from 2017 to reflect the increased importance of tax matters within the UN as determined at the Addis Ababa Finance For Development Conference in 2015.

In 2019 the Chair of the CFE Direct Tax Sub-Committee, Jos Goubert, took part in the two meetings of the UN Committee – one at the end of April in New York and one in mid-October in Geneva. When in 2018 a new UN Committee of Tax Experts took office, the work of the committee needed some time to restart and to reorganise the different subcommittees. In addition to the two annual, plenary, sessions of the UN Tax Committee, several sub-committees meet on an ongoing ad-hoc basis, which include the members of the Committee as well as, in some cases, representatives of the private sector. During the plenary sessions the work of the subcommittees is discussed.

The following issues were on the agenda of the 18th and 19th Sessions of the Committee.

- Issues related to the next update of the United Nations Model Double Taxation Convention – with specific attention to the taxation of capital gains on offshore indirect transfers;
- The new handbook on mutual agreement procedure — dispute avoidance and resolution;
- The next update for the Transfer Pricing Manual;
- The Extractive Industries Handbook; and
- The Manual for the Negotiation of Bilateral Tax Treaties.

The agenda also included treatment of collective investment vehicles, taxation of development projects, environmental tax issues (with specific attention for carbon taxation), and the tax consequences of the digitalised economy.

Ian Young continues to have a peripheral role in the UN Tax Committee through the involvement of the International Chamber of Commerce (ICC) in the Tax Charter and Taxpayer Rights work that CFE is carrying out under the title "Tax Charters without Borders". ICC, and Ian Young, have made several presentations to UN Tax Committee delegates on this work.

EU Institutions

European Commission

In 2019, CFE held regular meetings with representatives from the European Commission to exchange views and discuss policy and other technical aspects related to the policy priorities of CFE Tax Advisers Europe. Representatives of the European Commission also attended CFE events in 2019. Wolfgang Mederer, Head of Unit, Legal Affairs - Direct Tax Directorate, TAXUD; Eleftheria Psaraki, Legal Affairs - Indirect Tax Directorate, TAXUD; and Roberta Grappiolo, Head of Sector for Infringement Procedures in Direct Taxation and State aid - Direct Tax Directorate, TAXUD all addressed the January 2019 Technical Committee Meetings in Brussels, speaking on the EU Commission Roadmap on Moving to Qualified Majority Voting in Tax Matters.

Hélène Michard, Unit for Tax Administration and Fight Against Tax Fraud, DG TAXUD; Ioanna Mitroyanni, Head of Sector Corporate Tax Transparency, DG TAXUD; and Dr Max Lienemeyer, Head of Unit Tax Planning Practices, DG COMP were speakers at the CFE Forum in June 2019. Bert Zuijdendorp, Head of Unit for Company Taxation Initiatives, DG TAXUD addressed the CFE General Assembly 2019 in Torino.

CFE Tax Advisers Europe was consulted in 2019 by the Commission's Taxation and Customs Union Directorate-General to provide input on their study on aggressive tax planning and harmful tax practices. On 26 June, Aleksandar Ivanovski, CFE Tax Policy Manager, and Brodie McIntosh, CFE Tax Technical Officer met with DG TAXUD representatives to provide responses on the effectiveness of EU measures related to tax planning and harmful tax practices.

Significantly, Valère Moutarlier, Director, Direct Taxation Tax Coordination, Economic Analysis and Evaluation, DG TAXUD, kindly wrote the Foreword to the CFE 60th Anniversary Book, released at the occasion of the CFE General Assembly in Turin on 4 October, reflecting on the next steps for EU tax policy within the framework of the new EU Commission presidency.

In 2019 CFE Tax Advisers Europe maintained a constructive working relationship with the European Commission.

European Parliament
Regular meetings and contact with Members of the European Parliament and their advisors was maintained in 2019. In May 2019, CFE Tax Advisers Europe concluded a Memorandum of Understanding with the European Parliament on a strategic partnership in the context of the EU elections and beyond.

Further, CFE Tax Advisers Europe celebrated its 60th Anniversary under the high patronage of the European Parliament, with a series of events, including a General Assembly, the inaugural Global Tax Advisers Platform conference and technical committee meetings held over three days in Torino, Italy, on 3 and 4 October 2019, hosted by the Italian member organisations of CFE - Associazione Nazionale Tributaristi Italiani (ANTI) & Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC).

The CFE Tax Advisers Europe was honoured to receive the patronage of the European Parliament of its 60th Anniversary, confirming the close links between the objectives of CFE's initiatives and the values of the European Union. In a written statement, the President of the European Parliament, David Sassoli, said:

> *"The European Parliament very much admires the aim of your initiative, which is to present the goals of your organisation from its beginnings 60 years ago and to examine the close relationships forged with the European institutions over the years.*
>
> *As you are aware, the power to tax is in the hands of the Member States, with the European Union having only limited competences. However, as EU tax policy is geared towards the smooth running of the single market, the harmonisation of indirect taxation, and the 'fight against harmful tax evasion and tax avoidance, have become EU policy priorities. In this framework, and in the context of other policies, the consultation and the exchange of information on national tax laws and practices, and on the coordination and development of tax law in Europe between national tax advisers, and between national tax advisers and the European institutions, are both necessary and extremely useful.*
>
> *For that reason, the institution I have the honour to preside over greatly appreciates the professional and committed work of your organisation. It also highly values your activity as an important partner in the last European elections campaign.*
>
> *It is therefore with great pleasure that I grant your event the European Parliament's patronage."*

Valère Moutarlier and Piergiorgio Valente

Piergiorgio Valente speaking at the Global Tax Policy Conference (Irish Tax Institute & Harvard Kennedy School Ash Centre)

Global Tax Advisers Platform
CFE Tax Advisers Europe is a founding member of the Global Tax Advisers Platform ("GTAP"), formed in 2013. GTAP is an international platform, representing more than 600,000 tax advisers in Europe, Asia and Africa, that seeks to bring together national and international organisations of tax professionals from all around the world.

GTAP is dedicated to the promotion of the public interest by ensuring the fair and efficient operation of national and international tax systems. A fair and efficient global tax framework favours the effective pursuit of taxpayers' and tax advisers' rights and interests. GTAP is committed to their furtherance, and to the continuous improvement of this framework.

In 2019, GTAP held its first Global Conference, held in Torino, Italy, on Thursday 3 October 2019 on the topic of "Tax and the Future". The conference was intended to reinforce closer cooperation by bringing to the forefront issues that are of interest to all tax advisers in a borderless, increasingly globalising and automated society, such as the future of global tax policy, the future of Corporate Income Tax and VAT, the future of the global tax profession and the future of business models and tax sustainability.

The founding members of GTAP are CFE Tax Advisers Europe, the Asia-Oceania Tax Consultants' Association (AOTCA), and the

Members and Observers of the Global Tax Advisers Platform (GTAP) in Torino


Global Tax Advisers Platform (GTAP) meeting in Torino

Global Tax Advisers Platform (GTAP) meeting at the margins of the 17th AOTCA International Tax Conference in Busan

Global Tax Advisers Platform (GTAP) meeting in Brussels

West Africa Union of Tax Institutes (WAUTI), and the observer members are the International Association of Financial Executives Institutes (IAFEI), the Society of Trust and Estate Practitioners (STEP), and the Arc Méditerranéen des Auditeurs (AMA). It is a key priority for GTAP to expand its membership and international network in order to reach tax professionals in all corners of the globe, effectively enabling the most inclusive dialogue and interaction.

On that basis, the GTAP members and observers signed the Torino-Busan Declaration in 2019. In this document, GTAP sets out four key short-term priorities to pursue the promotion of public interest by ensuring the fair and efficient operation of national and international tax systems. The four priorities highlighted in the Declaration are tax for growth, sustainable tax policies, tax and digitalisation, taxpayers' rights and certainty in a fast-paced world. The declaration was signed on 3 October 2019 on the occasion of the first GTAP Global Conference, and on 17 October 2019 in Busan, South Korea, on the occasion of the 2019 International Tax Conference of AOTCA.

Knowledge Sharing

CFE Academy

The CFE Academy aims to share knowledge and experience on tax matters while exchanging ideas on practical tax issues. The Academy creates opportunities for tax professionals to be updated on global tax developments through attending seminars and trainings.

In 2019, a CFE Academy seminar took place on 11 October 2019 in Mongolia, in partnership with the Mongolian Association of Certified Tax Consultants.

In addition, this year, CFE Tax Advisers Europe and the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC) signed a Memorandum of Understanding under which Italian accountants and tax advisers can participate in online courses on topics concerning European and international taxation. The first course was successfully recorded in July 2019 in Milan, Italy, on the topic of International and EU Taxation and Tax Policy. The lectures were provided by academic speakers and practitioners associated with CFE.

The second, third and fourth courses will be recorded in the coming months, and the topics of the courses will be Comparative Tax Policy Developments and Reflections on Ancillary Taxation Issues, International Tax Policy and EU Tax Law and Tax Policy, respectively.

The E-Learning platform is available in Italy to CNDCEC members, and it will soon be made available for practitioners worldwide through CFE Tax Advisers Europe.

The CFE Annual Tax Dinner with representatives from the European Institutions in attendance is held in Brussels.

CFE Tax Advisers Europe attends the OECD Consultation on the Taxation Challenges of the Digital Economy in Paris, France.

CFE President Piergiorgio Valente speaks on a global approach to the digitalisation of the economy at the Global Tax Policy Conference in Dublin, Ireland.

JANUARY FEBRUARY MARCH APRIL MAY JUNE JULY

CFE publishes an Opinion Statement on the European Commission Draft Supranational Risk Assessment Report for Anti-Money Laundering Risks to Services Provided by Tax Advisers.

Wim Gohres, Chair of the CFE Professional Affairs Committee, speaks on Mandatory Disclosure Rules at the General Assembly of the Association of Finnish Tax Professionals in Helsinki, Finland.

The CFE Tax Advisers Europe Forum is held in Brussels, Belgium, on the topic of “Creating Tax Certainty in an Uncertain World: Double Taxation, Tax Rulings & Dispute Resolution Processes”.

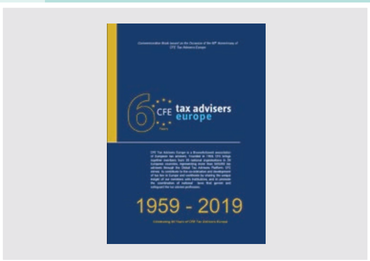
CFE Academy completes the 1st edition of the E-Learning Courses in cooperation with CNDCEC.

In order to celebrate its 60th Anniversary, CFE publishes the Liber Amicorum (IBFD).

The 12th European Conference on Tax Advisers' Professional Affairs is held in Paris, France, on the topic of “Making Anti-Money Laundering More Effective For Tax Advisers.

AUGUST SEPTEMBER OCTOBER NOVEMBER DECEMBER

CFE finalises the publication of the 60th Anniversary Book.



The inaugural Global Tax Advisers Platform (GTAP) Conference is held in Torino, Italy, on the topic of “Tax and the Future."

Under the high patronage of the European Parliament, the 60th Anniversary CFE General Assembly takes place in Torino, Italy.

Piergiorgio Valente opening the CFE Forum 2019 in Brussels

CFE Tax Advisers Europe Forum 2019 - Creating Tax Certainty in an Uncertain World: Double Taxation, Tax Rulings & Dispute Resolution Processes

The CFE Tax Advisers Europe Forum was held in Brussels, Belgium, on Thursday 6 June 2019, on the topic of "Creating Tax Certainty in an Uncertain World: Double Taxation, Tax Rulings & Dispute Resolution Processes". The Forum examined existing MAP mechanisms and the EU Tax Dispute Resolution Mechanisms Directive. The Forum further discussed means of avoiding tax disputes, such as indirect and cross-border rulings, as well as the State aid challenges to direct tax rulings- confirmatory rulings and advance pricing agreements (APAs).

Discussions were split across four panels and considered questions such as OECD and EU tax dispute resolution mechanisms, their efficiency and whether they improve tax certainty; the impact of dispute resolution processes on taxpayers, and their rights and obligations; means of avoiding tax disputes, such as cross-border rulings, and their efficacy; whether a European tax court or international tax administration ought to be established; and whether the European Commission should issue guidance on the State aid proofing of tax rulings given the uncertainty arising from State aid inquiries (confirmatory rulings and APAs).

Suzanne Metzler, Deputy Director at the Permanent Representation of the State of North Rhine-Westphalia to the EU welcomed speakers and attendees to the Forum, followed by an introduction of the topics for the panels by Piergiorgio Valente, President of CFE Tax Advisers Europe.

Panel I

The first panel entitled "Avoiding Tax Disputes - Indirect Tax Cross-Border Rulings Scheme & Co-Operative Compliance Systems" discussed current means of avoiding disputes, in particular the indirect tax EU pilot ruling scheme, VAT Cross-Border Rulings, "CBR", and panellists shared experiences of the scheme in practice. In addition, the panellists examined other means by which tax administrations and advisers can work collaboratively to anticipate and resolve disputes before they actually occur, such as confirmatory tax rulings and classification of taxpayer risk by tax administrations.

Hélène Michard, Unit for Tax Administration and Fight Against Tax Fraud, DG TAXUD, European Commission, discussed the mandate of the EU VAT Forum, its subgroups and activities; VAT Cross-Border Rulings; and the feedback received by the Commission concerning the CBR scheme. She also spoke about the role of CBR in preventing possible VAT disputes.

François Coutureau and Jean-Claude Mbonyumutwa Semucyo from the Ministry of Finance of Belgium discussed cross border rulings from the perspective of the Belgian Ministry of Finance and the means of avoiding double taxation when applying VAT rules. They also shared the Belgian view on confirmatory tax rulings and means of co-operation with taxpayers.

Emmanuel Cotessat, International VAT Association, and Matteo Dellapina from Studio P. Centore & Associates discussed their experience of the CBR scheme from the practitioner perspective, sharing their views on possible alternative methods for avoiding disputes and the EU pilot ruling scheme. The panel was moderated by Jeremy Woolf, Chair of the CFE Indirect Taxes Subcommittee.

Panel II

The second panel entitled "Cross-Border Tax Dispute Resolution – OECD BEPS Action 14 & Mutual Agreement Procedure", moderated by Stella Raventós-Calvo, Chair of the CFE Fiscal Committee, examined OECD co-operative compliance under Action 14 of the BEPS Action Plan and Mutual Agreement Procedure dispute resolution mechanisms, the policy origins of the mechanisms, their application and efficiency in practice, and whether they improve tax certainty. The panel also considered the impact of the processes on taxpayer rights and obligations and whether a European or international tax (arbitration) court is required in the light of the complicated nature of cross-border tax disputes.

Sandra Knaepen, Head of the Mutual Agreement Procedure Unit, Centre for Tax Policy and Administration, OECD, presented the technical aspects of the OECD's co-operative compliance under Action 14 of the BEPS Action Plan and Mutual Agreement Procedure dispute resolution mechanisms, as well as the policy origins of the mechanisms and the efficiency in practice. Hans Mooij, Chair of TRIBUTE, Foundation for International Tax Dispute Resolution, discussed his views on the OECD's MAP and the European Union's Tax Dispute Resolution Mechanism Directive.

Levent Sabanogullari from the Permanent Court of Arbitration discussed the establishment and role of the Court of Arbitration in cross-border disputes and processes of arbitration and hearings and how this interacts with the OECD and EU dispute resolution processes. Peter Nias, Barrister at the Pump Court Chambers in the United Kingdom discussed a holistic approach to Dispute Resolution Management, the CDR Programme and how it completes MAP, the MAP gap, and Supplementary Dispute Resolution (SDR) mechanisms.


Peter Nias, Levent Sabanogullari, Sandra Knaepen, Stella Raventós-Calvo and Hans Mooij


Suzanne Metzler addressing the CFE Forum 2019 in Brussels

Peter Nias, Sandra Knaepen, Stella Raventós-Calvo, Hans Mooij and Levent Sabanogullari


CFE Forum 2019 in Brussels

Arno Oudijn, Ioanna Mitroyanni, Isabelle Richelle and Nicola Crispino

Matteo Dellapina, Emmanuel Cotessat, Hélène Michard, François Coutureau and Jean-Claude Mbonyumutwa Semucyo


François Coutureau and Jean-Claude Mbonyumutwa Semucyo

Isabelle Richelle, Ine Lejeune and Jeremy Woolf

Panel III

The third panel, entitled "EU Directive on Tax Dispute Resolution Mechanisms" discussed the dispute resolution process contained in the EU Tax Dispute Resolution Mechanisms Directive, the policy origins of the mechanism, its application in practice, and whether it will improve tax certainty. The panellists also considered the impact of the processes on taxpayer rights and obligations and whether a European or international tax (arbitration) court is required in the light of the complicated nature of cross-border tax disputes. Finally, the panel questioned the impact of potential further revisions of international taxation principles and corporate taxation reform contained in the EU anti-tax avoidance directives on tax certainty.

Ioanna Mitroyanni, Head of Sector Corporate Tax Transparency, DG TAXUD, European Commission; Arno Oudijn, Fiscal Counsellor at the Dutch Ministry of Finance; Nicola Crispino, Rödl & Partner; and Ine Lejeune, PwC, collectively discussed the EU Directive and outlined the Commission's proposals with a joint detailed analysis of the four stages of the dispute resolution process, namely the complaint, the MAP, the opinion of an advisory commission and the final decision.

The speakers also discussed whether the Directive is subject to Article 47 EU Charter of Fundamental Rights and, in spite of the taxpayer not being a party to the proceedings, in what ways they could be entitled to fair trial rights per the Directive / Article 47 of the EU Charter. The panel was moderated by Prof. Dr. Isabelle Richelle, member of the ECJ Task Force, CFE Tax Advisers Europe.

Panel IV

The fourth panel entitled "Direct Tax Rulings – State Aid Challenges", moderated by Aleksandar Ivanovski, CFE Tax Policy Manager, examined tax certainty issues related to the State Aid challenges for tax rulings and advance pricing agreements (APAs).

Dr Max Lienemeyer, Head of Unit Tax Planning Practices, DG COMP, European Commission; Ted McGrath, Tax Partner at William Fry; Nina Niejahr from Baker McKenzie; and Conor Quigley QC, Barrister at Serle Court, United Kingdom debated the robustness of EU Commission's fiscal State aid enforcement policy in light of the recent Commission decisions / ECJ decisions as well as the need for guidance for taxpayers in light of the tax certainty debate.

Gary Ashford, CFE Vice-President made the closing remarks at the 2019 CFE Tax Advisers Europe Forum.

Max Lienemeyer, Conor Quigley QC, Aleksandar Ivanovski, Nina Niejahr and Ted McGrath

Aleksandar Ivanovski

Award of the CFE Albert J. Rädler Medal 2019

Albert Rädler, Andrew Clarke, Tom Ceulemans and Piergiorgio Valente

The CFE Albert J. Rädler Medal was launched in 2013 to encourage academic excellence among young tax students in the field of European taxation, and to recognise the outstanding contribution to the field of taxation of the late Professor Albert J. Rädler.

CFE Tax Advisers Europe awarded the Albert J. Rädler Medal 2018 for academic excellence in European taxation to Mr. Tom Ceulemans of the University of Antwerp, Belgium, for his Master's thesis titled "The Implementation of Articles 7 and 9 ATAD (EU Anti-Tax Avoidance Directive) regarding CFC rules into Belgian Corporate Income Tax Law." The Medal was awarded in Brussels by Andrew Clarke, Adviser to the Executive Board of CFE Tax Advisers Europe, at the occasion of the Forum 2019, CFE's flagship international tax conference, which took place on 6 June 2019.

Mr. Ceulemans identified potential loopholes and weaknesses in the Belgian implementation legislation and points in the final part of his thesis to specific improvement measures. Of particular interest in this context is the lack of double tax treaty relief in the new Belgian legislation, which seems to be in conflict with ATAD's requirements and also fails to meet the ECJ's proportionality test criteria. The conclusions that Mr Ceulemans reaches are relevant from a broader policy perspective, too. This thesis will add value to other EU Member States' efforts to comply with the ATAD mandate.

Hélène Michard and Jeremy Woolf

Gary Ashford

CFE Forum 2019 in Brussels

12th European Conference on Tax Advisers' Professional Affairs

The 12th European Conference on Tax Advisers' Professional Affairs, hosted by CFE Tax Advisers Europe and the Institut des Avocats Conseils Fiscaux (IACF), took place on Friday 29 November 2019; this year entitled "Making Anti-Money Laundering More Effective For Tax Advisers". Two panels of expert speakers considered the international approach against tax and financial crime as well as the risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion.

With the introduction of various compliance obligations arising out of the EU anti-money laundering rules, that have been introduced by the 5th Anti-Money Laundering Directive ("AML"), panellists also discussed the issues of introduction of beneficial ownership registers and the related trends of making such registers public, as well as the existing FATF Standards and Recommendations that build on other EU transparency initiatives to prevent money laundering. As such, the panellists addressed the newly established regulatory environment as well as the background issues arising from various public revelations such as the Panama Papers, and how those affected the public industries including tax advisory services and financial institutions, and how the OECD efforts in fighting money laundering by the unit on Tax & Crime address these problems.

Robby Houben, Katerina Boguslavska, Dick Barmentlo, Nilimesh Baruah, Samantha Bourton

Katerina Boguslavska, Dick Barmentlo and Nilimesh Baruah

The Panel 1 discussion addressed the international approach against money-laundering, and was chaired by Dick Barmentlo, Delegate of the CFE Professional Affairs Committee. As the keynote speaker, Nilimesh Baruah from the OECD Centre for Tax Policy and Administration presented the OECD work related to tax and crimes. Mr Baruah discussed the increasingly complex and innovative forms of tax evasion and other financial crimes as well as the intrinsic link between such crime and the use of corporate vehicles. Coinciding with the 10th Anniversary of the OECD Global Forum on Tax Transparency and Exchange of Information, Mr Baruah highlighted the indispensable role of the Global Forum in improving the transparency tools worldwide and the role of the Forum in providing governments tools to exchange data on previously opaque information, and give enforcement authorities means to address issues arising from the opacity of such structures for the benefit of their citizens. Dr Kateryna Bogouslavska, Project Manager of the AML Basel Index and formerly a researcher at Chatham House explained the relevance of the Basel Index, a research based ranking of countries' exposure to ML and TF risks. Dr Bogouslavska also discussed the tax related risks and the relevance for tax advisers of the data and analysis contained in the publicly available Basel AML index.

In the same panel discussion, a UK perspective on the AML approach was presented by Samantha Bourton of the University of the West of England, who described the UK as one of the pioneer jurisdictions in implementing key AML international obligations, often going well beyond the minimal requirements in EU legislation. Finally, Dr Robby Houben, professor of financial law at the University of Antwerp discussed the emergence and proliferation of cryptoassets and the risks for money laundering inherently contained in such new technologies largely based on distributed legers such as blockchain. In conclusion, Dr Houben suggested that the perceived risks need to be addressed with future-proof regulation and enforcement, rather than 'blaming' the technology itself, which should be harnessed for wider societal benefit.

The second panel examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion. The panel discussion was chaired by Heather Brehcist, Head of Professional Standards at the Chartered Institute of Taxation (UK) and Delegate of the CFE Professional Affairs Committee.

Panellists considered the effectiveness and the impact of existing EU rules and the new requirements of the 5th AML Directive, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership. Speakers also discussed the impact of enhanced cooperation and exchanges of information provided for between the EU and Member States under the 5th AML Directive. In addition, panellists discussed compliance with and implementation of the measures by tax advisers in practice and the information available to supervisory bodies to facilitate their obligations under the Directive.

Wim Gohres, Chair of the CFE Professional Affairs Committee and


Wim Gohres, John Binns, Heather Brehcist, Christian Leroy and Gary Ashford

Wim Gohres opening the 12th CFE European Professional Affairs Conference in Paris


Wim Gohres, Nilimesh Baruah and Ian Hayes


CFE Professional Affairs Conference in Paris


CFE Professional Affairs Conference in Paris


Damir Brajković, Karima Baakil and Ivan Čevizović

John Binns, Partner BCL Solicitors UK, presented the AML rules in practice. Mr Gohres presented the application and administration of the AML rules in practice from the perspective of an AML compliance officer in the Netherlands. Mr Binns highlighted the risks from a UK perspective, and the challenges and opportunities arising out of the potential regulatory divergence between the EU and the UK post-Brexit. Christian Leroy, a Member of the Board of the Conseil National des Barreaux, France, compared and contrasted the differences in the implementation of the European AML regime across EU jurisdictions, primarily identifying the issue of the original intent of the AML regime to apply to the financial sector, such as banks, and subsequently being adopted to the non-financial sectors. Lastly, Gary Ashford, Vice-President of CFE Tax Advisers Europe, discussed the approach to civil treatment of tax fraud, evaluating the possibilities and risks, the client perspective on such issues, reputational risks and transparency issues arising out of the international legal obligations such as DAC and OECD-based instruments for exchange of information. Mr Ashford highlighted the issues related to civil investigations of tax fraud, such as contractual disclosure facilities and the negotiated financial settlement.

Mr Bruno Gouthière, Executive Board Member of CFE Tax Advisers Europe and Partner at CMS Francis Lefebvre, closed the 12th European Conference on Tax Advisers Professional Affairs, commenting on the extent to which the professional landscape for tax advisers has changed in the past years and the importance of such discussions concerning obligations for tax advisers that are not necessarily related to their daily tax advisory role, but which have a significant impact on the exercise of the tax profession.

David Russell, Euney Marie Mata-Perez, Piergiorgio Valente, Gladys Olajumoke Simplice, Gabriele Fontanesi, Federico Broglia, Mario Garavoglia

The Inaugural Global Tax Advisers Platform Conference

In 2019, the Global Tax Advisers Platform held its first Global Conference, in Torino, Italy, on Thursday 3 October 2019 on the topic of "Tax and the Future". The conference reflected the conviction that tax advisers of all jurisdictions have common interests; and that these interests can be pursued more effectively together.

Piergiorgio Valente, President of CFE Tax Advisers Europe, welcomed speakers and attendees to the Conference, followed by an introduction from Sergio Rolando, Council Treasurer of the City of Turin; a representative of the Guardia di Finanza (GdF); Alessandro Solidoro, Counsellor at the Consiglio Nazionale dei Dottori Commercialisti e Degli Esperti Contabili (CNDCEC); Gaetano Ragucci, President at the Associazione Nazionale Tributaristi Italiani (ANTI); and Volker Kaiser, Vice-President at the Bundessteuerberaterkammer (BStBK).

The first panel entitled "Future of Global Tax Policy" discussed how the future will drive tax policy issues worldwide. Krister Andersson, Vice President of the Employers' Group, European Economic and Social Committee (EESC); Gladys Olajumoke Simplice, President of the West African Union of Tax Institutes (WAUTI); Bert Zuijdendorp, European Commission; Bruno Ferroni, Professor at the Università Cattolica del Sacro Cuore; and Euney Marie J. Mata-Perez, President of Asia-Oceania Tax Consultants' Association (AOTCA) were the speakers on the first panel, moderated by Piergiorgio Valente, President of CFE Tax Advisers Europe.

The second panel was moderated by Stella Raventós-Calvo, Chair of the CFE Fiscal Committee, and discussed the future of Corporate Income Tax and VAT. João Félix Pinto Nogueira, Deputy Academic Chairman at IBFD; Gaetano Ragucci, President of ANTI; Francesca Mariotti, Director of Tax Policies at Confindustria; and John Voyez, Partner at Smith & Williamson LLP debated how digitalisation will affect direct and indirect taxation.

On the third panel, David Russell QC, Deputy Chairman at the Society of Trust and Estate Practitioners (STEP); Nii Ayi Aryeetey, Immediate Past President of WAUT and Glyn Fullelove, President of the Chartered Institute of Taxation (CIOT), discussed the future of the global tax profession. The panel was moderated by Wim Gohres, Chair of the CFE Professional Affairs Committee.

The fourth panel was dedicated to debate the future of business models and tax sustainability. Ian Hayes, Chair of the CFE Tax Technology Committee, moderated high level discussion among Eric Herren, from the International Institute for Counter Terrorism; Massimo Getto, Vice-President and CFO at Viasat Group; Glyn Fullelove, President of the Chartered Institute of Taxation (CIOT); and Gilberto Gelosa, CNDCEC.

Gary Ashford, CFE Vice-President, gave a closing speech to the GTAP Global Conference 2019, followed by Gabriele Fontanesi, International Association of Financial Executives Institutes (IAFEI); Mario Garavoglia, President of the Center for Criminal Tax Law (CDPT); Gilberto Gelosa, CNDCEC; Luca Asvisio, President of the Ordine Dei Dottori Commercialisti e Degli Esperti Contabili di Torino (ODCEC); and Ernesto Ramojno, President of the Piemonte-Valle D'Aosta section, ANTI.

Ian Hayes, Olateju Somorin, Gladys Olajumoke Simplice and Piergiorgio Valente

Ian Hayes, Gilberto Gelosa, Massimo Getto, Eric Herren

Mario Garavoglia, Gilberto Gelosa, Gary Ashford and Gabriele Fontanesi

João Nogueira, Stella Raventós-Calvo, John Voyez, Francesca Mariotti, Gaetano Ragucci

Inaugural Global Tax Advisers Platform (GTAP) Conference in Torino

Bruno Ferroni, Gladys Simplice, Piergiorgio Valente, Euney Marie Mata-Perez, Bert Zuijdendorp and Krister Andersson

Bert Zuijdendorp and Krister Andersson

The Global Tax Advisers Platform (GTAP) at the margins of the 17th AOTCA International Tax Conference in Busan

Juan López Rodríguez, Stella Raventós-Calvo and Piergiorgio Valente

Anna Misiak, Jiří Nekovář and Petra Pospíšilová

Gary Ashford and Giampiero Guarnerio

Gilberto Gelosa and Piergiorgio Valente

Richard Lyal and Jeremy Woolf

CFE Annual Tax Dinner

CFE Tax Advisers Europe organises an annual dinner which provides the opportunity to strengthen relationships with colleagues and counterparts, and expand engagement beyond formal policy meetings on technical issues. Attendees are able to exchange views in an informal setting with members of the European Commission working in relevant areas, such as Directorate-General for Taxation and Customs Union (DG Taxud), Members of the European Parliament with a particular interest in tax and Members of the Council of the European Union.

In 2019, the Annual Tax Dinner took place on Monday 28 January 2019 at the Amigo Hotel in Brussels. The following representatives of the European Institutions were among the attendees: Richard Lyal, Principal Legal Adviser, Directorate D (Direct taxation, Tax coordination, Economic analysis and Evaluation), European Commission; Momchil Sabev, Head of Unit, Directorate E (International and General Affairs), European Commission; Andreas Strub, Head of Unit, General Secretariat of the Council of the European Union; Wolfgang Mederer, Head of Unit, Directorate D (Direct taxation, Tax coordination, Economic analysis and Evaluation), European Commission; Eleftheria Psaraki, Policy Officer, Directorate C (Indirect Taxation and Tax Administration), European Commission; Juan López Rodríguez, Legal Officer, Directorate-General for Taxation and Customs Union, European Commission. Jorge Ferreras Gutiérrez, Counsellor, Permanent Representation of the Kingdom of Spain to the EU was also among the attendees.

Wolfgang Mederer, Anne Gunnell and Jos Goubert

Stella Raventós-Calvo and Wolfgang Mederer

Piergiorgio Valente and Ian Hayes

CFE Annual Tax Dinner

Aleksandra Heinzer, Marc Bornhauser and Trudy Perié

Monica Zafferani and Daniela Mina

Ian Hayes, Martin Phelan, Piergiorgio Valente and Aleksandra Heinzer

Momchil Sabev and Aleksandar Ivanovski

International Tax Cooperation Congress 2019

The International Tax Cooperation Congress 2019 was held in Barcelona, Spain, on 17 & 18 January on “Digital Economy, Transfer Pricing and Litigation in Tax Matters”. Piergiorgio Valente, CFE President, spoke on taxation of the Digital Economy, and CFE Fiscal Committee Chair Stella Raventós-Calvo moderated a panel on "International Legal Limits on Taxation of the Digital Economy".

The General Assembly of the Association of Finnish Tax Professionals

Wim Gohres, Chair of the CFE Professional Affairs Committee, was invited to attend the General Assembly of the Association of Finnish Tax Professionals in Helsinki, Finland, on 25 April. At the meeting, Wim Gohres spoke on Mandatory Disclosure Rules.

Global Tax Policy Conference

The Irish Taxation Institute (ITI), a member organisation of CFE Tax Advisers Europe, and the Harvard Kennedy School of Governance organised ITI’s third Global Tax Policy Conference, which took place in Dublin, Ireland, on 22 – 24 May, entitled “Driving the Future”. Over two days of high-level discussions, representatives of the OECD, EU Commission, tax advisers, business and academia compared and contrasted the different proposals and possible outcomes. CFE President Piergiorgio Valente spoke on a global approach to the digitalisation of the economy.

IFA European Region Conference 2019

The IFA European Region Conference 2019 was held in Warsaw, Poland, on 22 – 24 May, entitled “Current challenges to income and VAT taxation”. The conference was attended by Anna Misiak, CFE Vice-President.

The 4th International Taxpayers Rights Conference

On 22 - 24 May Ian Young attended the 4th International Taxpayers Rights Conference in Minneapolis, United States, representing CFE. The theme of the conference was taxpayer rights in the digital age and there were panel sessions on Big Data, Whistleblowers and vulnerable taxpayers. The conference also saw the update of the IBFD Observatory of protection of taxpayer rights.

CFE Tax Advisers Europe Meeting with the Chamber of Tax Advisers of the Czech Republic and the Institut des Experts-Comptables et des Conseils Fiscaux

On 6 September 2019, CFE Tax Advisers Europe met with the Chamber of Tax Advisers of the Czech Republic and the Institut des Experts-Comptables et des Conseils Fiscaux in Brussels. At the meeting, CFE Tax Policy Manager Aleksandar Ivanovski had the opportunity to discuss the CFE’s priorities for the technical committees and strengthen relationships with CFE members.

Italia-Africa Business Week

CFE Tax Advisers Europe also participated in the Italia-Africa Business Week held on 26 – 27 November in Milan, Italy. The conference gathered more than 300 attendees to discuss business development, international cooperation and more. CFE President Piergiorgio Valente participated in a roundtable on “Customs and trade between Africa and Italy”.

Stella Raventós-Calvo at the International Tax Cooperation Congress 2019 in Barcelona

Piergiorgio Valente at the Irish Tax Institute Global Tax Policy Conference in Dublin

Christine Cloquet, Aleksandar Ivanovski and Radek Neužil

Piergiorgio Valente attending the Italia-Africa Business Week in Milan

CFE Publications

Opinion Statements – Policy and Technical Position Papers Published in 2019 by CFE Tax Advisers Europe

Fiscal Committee:
In 2019, the Fiscal Committee of CFE Tax Advisers Europe published three Opinion Statements, one joint Statement with the Global Tax Advisers Platform (GTAP) and three joint Statements with the Professional Affairs Committee:

- **Opinion Statement FC 1/2019** CFE Response to the OECD Consultation Document: Addressing the Tax Challenges of the Digitalising Economy.
- **Opinion Statement FC 2/2019** concerning the implications of the decision of the Court of Justice of the EU in case C-132/16 *Iberdrola* on input tax deductions.
- **Opinion Statement FC3/2019** on the Commission consultation on amending Directive 2006/112/EC, as regards provisions relating to distance sales of goods and certain domestic supplies of goods.
- **Opinion Statement CFE/GTAP** on the OECD Consultation on Draft Report on Tax Morale (2019).
- **Opinion Statement CFE 1/2019** on the Opinion Statement on European Tax Advisers' Policy Priorities for the EU Mandate 2019-2024.
- **Opinion Statement CFE 2/2019** on the OECD Consultation on a Unified Approach under Pillar One.
- **Opinion Statement CFE 3/2019** on the OECD Consultation on a Unified Approach under Pillar Two.

Professional Affairs Committee:
In 2019, the Professional Affairs Committee of CFE Tax Advisers Europe published one Opinion Statement, one Questionnaire, one joint Statement with the Global Tax Advisers Platform (GTAP) and three joint Statements with the Fiscal Committee:

- **Opinion Statement PAC 1/2019** on the European Commission Draft Supranational Risk Assessment Report for Anti-Money Laundering Risks to Services Provided by Tax Advisers.
- **Opinion Statement CFE/GTAP** on the OECD Consultation on Draft Report on Tax Morale (2019).
- **Opinion Statement CFE 1/2019** on the Opinion Statement on European Tax Advisers' Policy Priorities for the EU Mandate 2019-2024.
- **Opinion Statement CFE 2/2019** on the OECD Consultation on a Unified Approach under Pillar One.
- **Opinion Statement CFE 3/2019** on the OECD Consultation on a Unified Approach under Pillar Two.
- **Professional Affairs Committee Questionnaire** on the Project Taxpayer's Rights and Charters.

ECJ Task Force:
In 2019, the ECJ Task Force published four Opinion Statements:

- **Opinion Statement ECJ-TF 1/2019** on the CJEU decision of 31 May 2018 in Case C-382/16, *Hornbach-Baumarkt*, concerning the application of transfer pricing rules to transactions between resident and non-resident associated enterprises (= ET 2019, 446-452).
- **Opinion Statement ECJ-TF 2/2019** on the CJEU decisions of 26 February 2019 in Cases C-115/16, C-118/16, C-119/16 and C-299/16, *N Luxembourg I et al*, and Cases C-116/16 and C-117/17, T *Danmark et al*, concerning the "beneficial ownership" requirement and the anti-abuse principle in the company tax directives (= ET 2019 [in print]).
- **Opinion Statement ECJ-TF 3/2019** on the CJEU decision of 22 November 2018 in Case C-575/17, *Sofina and others*, on withholding taxes, losses and territoriality (= ET 2020 [in print]).
- **Opinion Statement ECJ-TF 4/2019** on the CJEU decision of 26 February 2019 in Case C-135/17, *X-GmbH*, on the German CFC rules and third countries.

External Publications

European Taxation Tax Journal
The leading European tax law journal European Taxation, edited by IBFD, regularly publishes articles on CFE conferences and selected Opinion Statements of particular relevance. European Taxation is the official journal of the CFE Tax Advisers Europe.

The following are a list of the Opinion Statements published by European Taxation in 2019:

- **The Ulaanbaatar Declaration: 10 Keys Priorities in International Taxation Identified by the Global Tax Advisers' Platform (GTAP)** (Piergiorgio Valente, CFE President). Published in Volume 59 – Number 1 - 2019.
- **Opinion Statement ECJ-TF 3/2018** on the CJEU decision of 12 June 2018, in Case C-650/16, *Bevola*, concerning the utilisation of "definitive losses" attributable to a foreign permanent establishment. Published in Volume 59 – Number 2/3 - 2019.
- **Opinion Statement FC 1/2019** CFE Response to the OECD Consultation Document: Addressing the Tax Challenges of the Digitalising Economy. Published in Volume 59 – Number 8 - 2019.
- **Opinion Statement ECJ-TF 1/2019** on the CJEU decision of 31 May 2018 in Case C-382/16, *Hornbach-Baumarkt*, concerning the application of transfer pricing rules to transactions between resident and non-resident associated enterprises. Published in Volume 59 – Number 9 – 2019.
- **Opinion Statement ECJ-TF 2/2019** on the CJEU decisions of 26 February 2019 in Cases C-115/16, C-118/16, C-119/16 and C-299/16, *N Luxembourg I et al*, and Cases C-116/16 and C-117/17, *T Danmark et al*, concerning the "beneficial ownership" requirement and the anti-abuse principle in the company tax directives. Published in Volume 59 – Number 10 – 2019.
- **Opinion Statement CFE 1/2019** on European Tax Advisers' Policy Priorities for the EU Mandate 2019-2024.

Interviews & Articles

In 2019, CFE President Piergiorgio Valente had an article published on Intertax, a periodic publication of Kluwer Law International which provides analysis on international tax law. In the article entitled "Geotaxation and the Digital: Janus in the Mirror", the CFE President spoke about the development of the international tax scenario and how it reflects on modern geotaxation.

FOREWORD

Valère Moutarlier, Director, Direct Taxation Tax Coordination, Economic Analysis and Evaluation, DG TAXUD, European Commission

As we approach the end of the current Commission mandate and start to prepare for a new one, it is the ideal time to reflect on the next steps for EU tax policy. It is the moment to consider what we have achieved over the past five years and what we want to achieve in the next five, and beyond. Planning the next agenda for taxation in Europe is a process that must be carefully balanced.

On one hand, there should be minimum disruption to the work already done or to the reforms which are still being implemented. On the other hand, procrastination is not an option in today's rapidly changing world, where globalisation, digitalisation and wider social change continue to undermine the more traditional structures around taxation.

The past five years have undoubtedly been the most dynamic period ever in EU tax policy. There are a number of reasons for this. Taxation became an area of increasing public interest, largely due to the financial crisis and a series of high profile media leaks.

This in turn fuelled a new political impetus around the agenda for fair and effective taxation, with a focus on delivering real results. In addition, Member States realised that, in the modern environment, taxation can no longer be treated in isolation. Its impact on economic, social, monetary, environmental and development policies has become increasingly apparent. So too has its influence on key priorities for Europe, such as competitiveness, job creation, social justice and sustainable resources. With this in mind, Member States gradually accepted that they have to work together on taxation if they are to face up to modern challenges and achieve their collective goals.

The result has been a number of significant and much-needed reforms in Europe – and beyond – in a very short space of time. These broadly fall into three categories.

First, we have created a robust new tax transparency framework and secured an unprecedented level of openness on tax matters across the EU. Member States have agreed to much greater administrative cooperation and information sharing – on both individuals and companies.

The first two Directives on Administrative Cooperation laid the ground for automatic exchange of a wide range of information on individuals' income – from employment and pension income to financial accounts. This was reinforced in 2017, following the Panama Papers revelations, to also cover information related to money laundering. Regarding companies' income, further amendments to the Directive ensured the automatic exchange of information on tax rulings and multinationals' accounts.

OPENING REMARKS

Pascal Saint-Amans

Director of the Centre for Tax Policy and Administration of the OECD

It is my great pleasure to deliver the OECD contribution to the 60th anniversary of the CFE. The collaboration between the CFE and the OECD is longstanding. The CFE has been actively following our work since its inception in 1959 - only a few years before the publication of the 1963 OECD Model Tax Convention. Up to 2008, the OECD delivered many projects as a standard setter in the field of international taxation; for example through many amendments to the OECD Model Tax Convention, the publication of the transfer pricing Guidelines in 1979 and in 1995 and subsequent amendment, and in many other areas (harmful tax practices, tax transparency etc.). That said, I would like to focus today on the past decade, which has resulted in fast pacing and profound changes in international taxation and on the new challenges ahead. Since 2008, the OECD, supported by the G20, has developed a very ambitious tax agenda to improve tax cooperation and transparency and ensure that MNEs pay their taxes where they carry on their activities.

The OECD has been the standard setter in both improving tax transparency and combatting Base Erosion and Profit Shifting (BEPS) by multinational enterprises (MNEs).

It is now taking on a new challenge to arrive to a consensus solution to address the tax consequences arising from the digitalisation of the economy. Changes are massive, notably for tax practitioners worldwide, as they must adapt to a new and constantly evolving environment.

The Reality of Tax Transparency in Practice

While 10 years ago, bank secrecy and opaque structures were used and abused by too many taxpayers across the world to hide their assets and income from tax administrations, bank secrecy for tax purposes no longer exists in 2019 and all financial centres are now engaged in the automatic exchange of financial information (through the OECD's Common Reporting Standard – CRS). Today, more than 4500 exchange of information agreements are in force with 90 jurisdictions implementing the CRS in 2018).

As a result, **47 million offshore accounts – with a total value of around 4.9 Trillion euros – have been exchanged for the first time. Over EUR 95 billion in additional revenue** (tax, interest, penalties) were collected from taxpayers coming forward through voluntary compliance mechanisms and from other offshore investigations.

Drawing on previous economic surveys, the OECD's preliminary analysis shows that bank deposits in international financial centres (IFCs) have fallen by approximately 34% over the past ten years for a decline of USD 551 billion. A large part of that decline is due to the onset of the automatic exchange of information, which accounts for about two thirds of that decrease. **Specifically, automatic exchange of information (AEOI) has led to a decline of 20% to 25% in the bank deposits in IFCs over the past decade.**

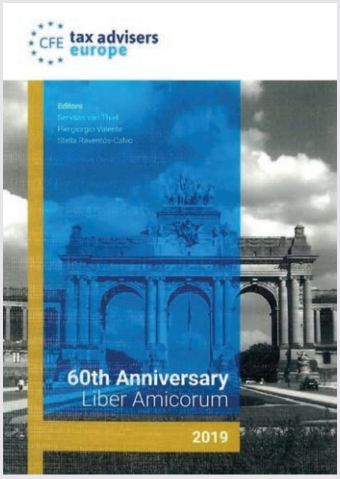
In another article entitled "International Tax Dispute Resolution: New EU Rules" the CFE President discussed how international tax disputes arise and how the mutual agreement procedure framework has changed in the last few years. The article was published by the International Association of Financial Executives Institutes (IAFEI).

Piergiorgio Valente also had an article published in the European Taxation Tax Journal on the data-centered economy and the proper method for the evaluation of data and data processing activities. The article entitled "The Data Economy: On Evaluation and Taxation" is available in Volume 59 – Number 5 – 2019 of the IBFD Journal.

The CFE President has also written a chapter in IBFD's book "Taxing the Digital Economy – The EU Proposals and Other Insights" on digital services tax (DST), where he makes critical remarks about the DST proposals.

CFE Vice-President Anna Misiak gave an interview to the International Tax Review which was featured in two articles of the magazine. Both articles were about Mandatory Disclosure Rules (MDR) and how Poland is implementing the EU Directive. At the time, Anna Misiak criticised the legislation and questioned if the Polish tax authorities were ready to deal and comply with the EU Directive implications.

CFE 60th Anniversary Book



CFE 60th Anniversary Liber Amicorum

CFE Tax Advisers Europe Books

In 2019 CFE Tax Advisers Europe published two books to commemorate its 60th Anniversary: a 60th Anniversary Book and a Liber Amicorum.

The CFE Anniversary Book aims to give an overview of the history and development of CFE Tax Advisers Europe and examines the unique contribution the organisation has made to ongoing discussions in the international tax world.

Valère Moutarlier, Director, Direct Taxation Tax Coordination, Economic Analysis and Evaluation, DG TAXUD, kindly wrote the Foreword to the CFE 60th Anniversary Book, reflecting on the next steps for EU tax policy within the framework of the new EU Commission Presidency.

Regarding the role of CFE in the EU tax policy context Mr. Moutarlier said:

> *"(...) CFE has been a prominent and constructive actor in the EU's tax arena for many years now. Its contributions to consultations, submission of well-researched position papers and its membership in the Platform on Tax Good Governance are just a few of the ways in which it has brought its views and ideas to our attention.*
>
> *This Commission relies heavily on vocal, active and knowledgeable stakeholders for well-informed policy-making and CFE certainly meets this description.*
>
> *As we move forward now, towards a new mandate and a renewed agenda for taxation policy in Europe, I am sure that CFE will continue to liaise closely with the Commission and make its mark."*

Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration of the OECD, wrote the Opening Remarks for the CFE 60th Anniversary Book, highlighting the long-standing collaboration between the CFE and the OECD.

On the CFE-OECD cooperation, Mr. Saint-Amans said:

> *"It is my great pleasure to deliver the OECD contribution to the 60th anniversary of the CFE. The collaboration between the CFE and the OECD is longstanding. The CFE has been actively following our work since its inception in 1959 - only a few years before the publication of the 1963 OECD Model Tax Convention. Up to 2008, the OECD delivered many projects as a standard setter in the field of international taxation; for example through many amendments to the OECD Model Tax Convention, the publication of the transfer pricing Guidelines in 1979 and in 1995 and subsequent amendment, and in many other areas (harmful tax practices, tax transparency etc.).(...)"*

In the Liber Amicorum, compiled in honour of the 60th CFE Anniversary, renowned tax experts discuss key tax issues that challenge tax advisers, tax academics and tax officials on a daily basis. The book comprises interesting and insightful discussions on EU decision-making in the tax area in a digital world; taxpayer rights; recent developments in the fight against tax avoidance and tax evasion; in-depth analysis of VAT and cross-border rulings; and non-tax issues that may have implications on international taxation and finance.

Both books are available for purchase from the CFE Office in Brussels.

Electronic Publications

Tax Top 5

The "Tax Top 5" is a weekly e-publication containing the most relevant tax news and tax policy developments from the EU institutions, EU courts and OECD from the previous week. The weekly updates are a great success and the Tax Top 5 is now perceived as one of the most reliable and cohesive tax policy update e-publications in Brussels.

Global Tax Top 10
The Global Tax Top 10 is a monthly publication containing a round-up of international tax policy news of wider relevance for tax advisers. The publication was developed in response to the great success of the Tax Top 5, with a view to provide a succinct report on the most impactful tax policy and legislative developments that have taken place around the globe each month.

The publication builds on a long-standing tax technical and policy cooperation between CFE, AOTCA (Asia-Oceania Tax Consultants Association) and WAUTI (West African Union of Tax Institutes), which are the leading tax professionals' organisations of the Asian-Oceanic and West African regions.

Living CFE
"Living CFE" is a bi-annual publication which details the key events and meetings attended or organised by CFE Tax Advisers Europe, technical work published or submitted to international organisations, as well as forthcoming CFE events.

EU Tax Policy Report
The EU Tax Policy Report is a journal style publication, issued bi-annually, that provides a detailed analysis of significant primary law and tax policy developments at both EU and international level which have taken place in the previous six months. It also includes an overview of selected CJEU case-law and relevant European Commission decisions.

European Register of Tax Advisers

The European Register of Tax Advisers is an online platform which forms part of the CFE Tax Advisers Europe website, and provides the opportunity for qualified tax advisers to increase their online presence and widen their professional network.

The register allows tax advisers to network through attending events organised and promoted by CFE, and provides means for the users to engage with potential clients through advertising their areas of expertise and contact details on the Register.

Below are some of the benefits of registering with the European Register of Tax Advisers:

- **Visibility:** Enhanced opportunities to increase a tax adviser's online profile and come into contact with potential clients.
- **Network:** Opportunity to contact and collaborate with other tax experts in Europe on international taxation issues.
- **Pool of Experts:** Access to an easily searchable and centralised database of experts in various fields of taxation law and practice.
- **Sharing of Expertise:** Provides opportunities and the means to exchange knowledge with other professionals in a chosen area of taxation practice.
- **Events:** Invitations to specialised events with high profile speakers, attended by respected practitioners and representatives from European institutions.
- **Technical Updates:** Access to the latest news and publications regarding significant developments in taxation matters.

The Register platform is managed collaboratively by CFE Tax Advisers Europe and CFE's Member Organisations. CFE takes care of the technical aspects of the Register, and Member Organisations determine whether or not to approve the registration of the users. In 2018/2019, CFE completely redeveloped the European Register of Tax Advisers. The register now contains more specific information on registered advisers and their area of expertise. This allows for enhanced visibility for tax advisers, in a modern and updated format that is far more searchable for members of the public. Any tax adviser affiliated with one of the CFE's Member Organisations and qualified to work under European law requirements can register on the platform. Tax advisers who are not registered should consider signing up to benefit from the widening of their professional network.

Two Memoranda of Understanding between CFE Tax Advisers Europe and the Consiglio Nazioanle dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC) were signed on 11 June 2019, under which CNDCEC members can enrol in the European Register of Tax Advisers and can attend CFE Academy's online courses on relevant topics of European and international tax.

Piergiorgio Valente, Alessandro Solidoro, Massimo Miani and Ian Hayes

Six reasons to register with the European Register of Tax Advisers

General Assembly

The General Assembly in Torino and the associated social events were generously hosted by the CFE members from Italy, the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC) and the Associazione Nazionale Tributaristi Italiani (ANTI). The Welcome Reception was held at Il Palazzo Della Luce, and the Gala Dinner was held at Villa Sassi. In 2019, the General Assembly met twice. The first meeting was on 7 June in Brussels and the second one was on 4 October in Torino.

Meetings

At the meeting in Brussels in June, CFE President Piergiorgio Valente reported on updates to CFE's strategic roadmap and milestones achieved. The Institute of Accountants and Auditors of Montenegro attended in order to make a presentation concerning their organisation and application for CFE membership. Importantly, the General Assembly also voted at the June meeting to admit the Croatian Chamber of Tax Advisers as full members of the CFE.

Under the high patronage of the European Parliament, CFE Tax Advisers Europe celebrated its 60th Anniversary with a series of events, including the General Assembly, the inaugural Global Tax Advisers Platform conference and technical committee meetings, held over three days in Torino, Italy, on 3 and 4 October 2019.

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration addressed the General Assembly, highlighting the long-standing collaboration between the CFE and the OECD. Mr Saint-Amans said that CFE has been an active contributor to OECD's work since its inception in 1959 – only a few years before the publication of the 1963 OECD Model Tax Convention. Mr Saint-Amans welcomed CFE's recent contributions to OECD's public consultations and presented the upcoming OECD agenda on the taxation challenges of the digital economy. Representing the European Commission, Bert Zuijdendorp, Head of Company Taxation Initiatives, DG TAXUD, thanked CFE for its contribution to the taxation policy work of the European Commission over the years and discussed the important role that stakeholders play in the taxation policy initiatives of the EU. Mr Zuijdendorp also reflected on the synergy of the work undertaken by the OECD and the EU.

At the October meeting, Piergiorgio Valente reported on the milestones achieved in the second half of 2019, and presented to delegates the two finalised commemorative books that were published in order to celebrate CFE's 60th Anniversary: the Anniversary Book and the Liber Amicorum. CFE's membership also expanded in October, as the assembly voted to admit the Institute of Accountants and Auditors of Montenegro, the Association of Tax Advisors of Serbia and the Tax Advisory Chamber of Slovenia as CFE Observer Organisations. The meeting also voted to establish the New Tax Professionals group as an ad hoc committee.

General Assembly meeting in Torino

General Assembly meeting in Brussels

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration addressing the CFE General Assembly in Torino

Ilya Kucherov, Radek Neužil, Jiří Nekovář, Damir Brajković


Nicola Vecchietti Massacci, Mario Boidi and Ian Hayes


Welcome Reception in Torino


Gaetano Ragucci and Piergiorgio Valente


Krister Andersson and Andrew Clarke


Ian Hayes, Munkhmandakh Bayasgalan, Chiara Ceccarelli and Martin Phelan


CFE Delegates at the Welcome Reception in Torino


Jiří Nekovář and Piergiorgio Valente


Mario Boidi, Piergiorgio Valente and Ian Hayes

Martin Phelan, Bojan Huzanić, Piergiorgio Valente and Damir Brajković at the occasion of Croatia joining the CFE as Member

Gaetano Ragucci, Mario Boidi and Piergiorgio Valente

Karima Baakil, Pascal Saint-Amans and Piergiorgio Valente

Martin Phelan, Piergiorgio Valente, Andrew Clarke and Ian Hayes

Piergiorgio Valente and Ernesto Ramojno with the GTAP Delegation

Delegation of Serbia, Slovenia and Montenegro at the General Assembly in Torino

Italian Delegation at the Gala Dinner in Torino

Organisational Structure

The General Assembly is the governing body of CFE Tax Advisers Europe, at which each Member State is able to be represented. The primary responsibilities of the General Assembly are to decide on the acceptance of members and observers, to approve amendments to the governing statutes, to adopt the business report of the Executive Board and to approve the accounts and budget for the CFE.

DELEGATES OF THE GENERAL ASSEMBLY IN 2019

AT	Klaus Hübner, Friedrich Rödler, Herbert Houf, Philipp Rath, Franz Schmalzl
BE	Philippe Vanclooster, André Bert, Christine Cloquet, Bart van Coile
CH	Massimo Bianchi, Thorsten Kleibold
CZ	Petr Toman, Martin Tuček, Jana Skalová, Radek Neužil, Jiří Nekovář
ES	Jesús Sanmartin, José Ignacio Alemany
FI	Timo Matikkala
FR	Marc Bornhauser
HR	Damir Brajković, Bojan Huzanić
IE	Martin Lambe, Andrew Clarke
IT	Mario Boidi, Gaetano Ragucci, Giuseppe Antonio Barranco di Valdivieso, Piergiorgio Valente, Giuseppe Zizzo, Massimo Miani, Alessandro Solidoro, Gilberto Gelosa, Noemi Di Segni
LT	Rūta Bilkštytė
LU	Olivier Remacle
LV	Ainis Dābols, Inga Kursīte-Priedīte, Daiga Zēna-Zēmane, Marina Kuzenko
ME	Rade Scekic
MT	Conrad Cassar Torregiani, Geraldine Schembri
NL	Frank van Merrienboer, Henk Koller, Sylvester Schenk, Paul Kraan, Roelof Vos, Dick Barmentlo, Paul Cramer, Wim Gohres
PT	Francisco Sousa da Câmara
PL	Dariusz Michal Malinowski, Jacek Andrzej Zieliński, Mariusz Cieśla, Lucyna Kadzikowska
RO	Dan Manolescu, Ioan Simion, Romulus Badea
RS	Ivan Simič
RU	Tatiana Ioffe
SI	Ivan Simič
SK	Jozef Danis
SM	Monica Zafferani
UA	Leonid Rubanenko, Oleg Shmal
UK	Gary Ashford, Helen Whiteman, Anthony D. Thomas, Nick Parker, Martin Manuzi, Ian Hayes

Executive Board

The Executive Board is in charge of the day to day work of CFE Tax Advisers Europe and reports to the General Assembly. The Board monitors developments in taxation law and the profession within Europe, and devises and manages CFE's work streams arising from these issues. Work is managed through three committees, the Fiscal Committee, the Professional Affairs Committee and the Tax Technology Committee, which are chaired by a member of the Board. The Executive Board is composed of 10 people, i.e. the President, three Vice-Presidents, the Secretary General, the Treasurer, the Chair of the Fiscal Committee, the Chair of the Professional Affairs Committee, the Chair of the Tax Technology Committee and one Executive Board Member.

EXECUTIVE BOARD 2019

President
Piergiorgio Valente

Vice-President
Petra Pospíšilová

Vice-President
Anna Misiak

Vice-President
Gary Ashford

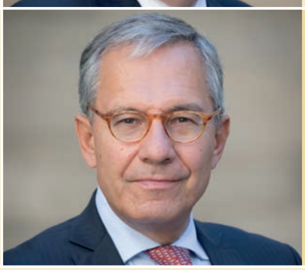
Secretary General
Martin Phelan

Treasurer
Branislav Kováč

Chair of the Fiscal Committee
Stella Raventós-Calvo

Chair of the Professional Affairs Committee
Wim Gohres

Chair of the Tax Technology Committee
Ian Hayes



Executive Board Member
Bruno Gouthière

FISCAL COMMITTEE

Delegates of the Fiscal Committee 2019

Fiscal Committee Chair: Stella Raventós-Calvo

Direct Taxes Sub-Committee

Chair: Jos Goubert

AT	Friedrich Rödler, Georg Wilfried Kofler
BE	Jos Goubert, Isabelle Richelle (expert)
CH	Pietro Sansonetti, Pascal Hinny
CZ	Lucie Wadurová, Luděk Vacík
ES	Victor Viana
FI	Timo Matikkala
FR	Olivier Dauchez
IE	Anne Gunnell
IT	Raffaele Rizzardi, Nicola Vecchietti Massacci, Giampiero Guarnerio
LT	Rūta Bilkštytė
LU	Romain Bontemps, Vanessa Ramos (expert)
LV	Ruta Tereško
MT	Geraldine Schembri, John Ellul Sullivan
NL	Adjay Pahladsingh, Stephen Brunner, Paul Kraan, Peter Flipsen, Marijke Vervoort
PL	Mariusz Cieśla, Mateusz Stańczyk
PT	Francisco de Sousa da Câmara
RO	Alin Chitu, Adrian Luca, Alin Irimia
RU	Yana Butrimovich
SI	Simona Novak
SK	Miriam Galandová
UA	Lyudmyla Rubanenko, Oleg Shmal
UK	Glyn Fullelove, Christopher Lallemand

FISCAL COMMITTEE

Indirect Taxes Sub-Committee

Chair: Jeremy Woolf

Vice-Chair: Trudy Perié

AT	Christine Weinzierl, Ingrid Rattinger
BE	Christian Amand (expert)
CH	Barbara Henzen, Willi Leutenegger
CZ	Milan Tomíček, Petr Toman, Petra Pospíšilová
ES	Jaime Rodríguez
FI	Timo Matikkala
FR	Véronique Lenoir, Laurent Chetcuti
HR	Bojan Huzanić, Ivan Čevizović
IE	David Duffy
IT	Remo Dominici, Ernesto Gatto
LT	Rūta Bilkštytė
LU	Erwan Loquet
LV	Inga Kursīte, Marina Kuzenko
MT	Chris Borg, Matthew Zampa
NL	Trudy Perié, Roelof Vos, Paul Cramer
PT	Francisco Sousa da Câmara
RO	Mariana Vizoli, Daniela Tanase
SI	Suzana Tokič, Aleksandra Heinzer, Tanja Urbanija
SK	Miriam Patiová
UA	Darya Reva
UK	John Voyez

PROFESSIONAL AFFAIRS COMMITTEE

Delegates of the Professional Affairs Committee 2019

Professional Affairs Committee Chair: Wim Gohres

AT	Friedrich Rödler, Georg Wilfried Kofler
BE	Philippe Vanclooster, Christine Cloquet
CH	Kaloyan Stoyanov
CZ	Radek Neužil, Michal Frank
ES	José Ignacio Alemany
FR	Philippe Rochmann, Bruno Gouthière
HR	Damir Brajković
IE	Martin Lambe, Martin Phelan
IT	Federico Vincenti, Maria Venturini, Gianluigi Longhi
LT	Rūta Bilkštytė
LU	John Hames
LV	Ilze Birzniece, Daiga Zēna-Zēmane, Marina Kuzenko
MT	Conrad Cassar Torregiani
NL	Dick Barmentlo, Sylvester Schenk, Frank van Merrienboer, Paul Kraan, Roel Kerckhoffs, Marloes Lammer
PL	Anna Misiak
RO	Alin Irimia, Alexander Miclev
RU	Tatiana Ioffe
SK	Miroslav Marcinčin, Adriana Horváthová, Branislav Kováč
UA	Leonid Rubanenko, Claudia Chosova
UK	Heather Brehcist, Alistair Cliff, Martin Manuzi, Nick Parker

TAX TECHNOLOGY COMMITTEE

Delegates of the Tax Technology Committee 2019

Tax Technology Committee Chair: Ian Hayes

BE	Christophe Meesters
CZ	Radek Neužil, Milan Vodička
FR	Gaëlle Menu-Lejeune
HR	Damir Brajković, Bojan Huzanić
IE	Martin Lambe, Clare McGuinness
IT	Diego Conte, Sebastiano Garufi, Alessandro Valente
MT	Conrad Cassar Torregiani
NL	Dick Barmentlo, Sylvester Schenk, Willem Faassen, Adriaan Bijleveld, Guy Thien
PL	Mariusz Cieśla, Michał Laskowski
RU	Dmitry Kirillov
UK	Gary Ashford, Ali Kennedy, Adrian Rudd, Richard Wild, Paul Aplin

ECJ TASK FORCE

Members of the ECJ Task Force 2019

ECJ Task Force Chair: Georg Kofler

- Alfredo García Prats
- Werner Haslehner
- Volker Heydt
- Eric Kemmeren
- Michael Lang
- Jürgen Lüdicke
- Rupert Shiers
- João Félix Pinto Nogueira
- Pasquale Pistone
- Stella Raventós-Calvo
- Isabelle Richelle
- Alexander Rust
- Emmanuel Raingeard de la Blétière

NEW TAX PROFESSIONALS COMMITTEE

Delegates of the New Tax Professionals Committee 2019

New Tax Professionals Committee Chair: Pieter van Os

AT	Markus Ehgartner, Doris Wagner
BE	Philippe Vandevoorde
CZ	Matej Nešleha
ES	Andreu Bové
IE	Gemma Tugwell
IT	Diego Conte, Sebastiano Garufi, Alessandro Valente
NL	Pieter van Os, Marie-Christine van der Endt
PL	Bartosz Kubista
UK	Heather Barnes, Julia Cockroft, Peter Coulthard, Sharlene Botherill

In Memoriam of Professor Paolo Centore

In 2019, CFE Tax Advisers Europe was deeply saddened to hear of the passing of Professor Paolo Centore.

Professor Centore was a devoted tax professional and highly respected member of the Fiscal Committee and Indirect Taxes Subcommittee of CFE Tax Advisers Europe. His enthusiasm for his work and collaboration with CFE, his unparalleled expertise and, above all, his wonderful presence will be sorely missed.

May his soul find rest in perfect peace.

CFE OFFICE

The CFE Tax Advisers Europe office in Brussels was set up in 2000 in order to maintain relationships with the European institutions. Since the re-establishment of the CFE as an international association under Belgian law in 2011, the Brussels office is the seat and the head office of the organisation.

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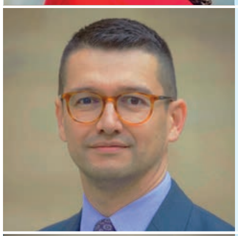

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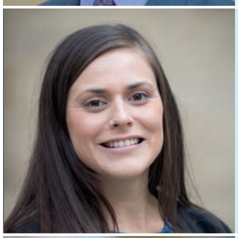

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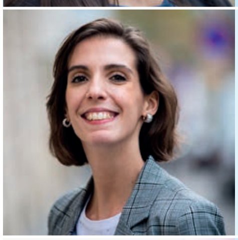

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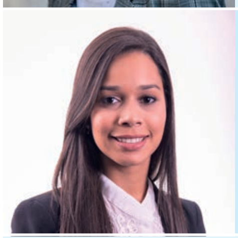

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IMPRESSUM

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Appendix

1. Opening Remarks of the CFE 60th Anniversary Book by Pascal Saint-Amans, Director of the Centre for Tax Policy and Administration of the OECD.
2. Foreword to the CFE 60th Anniversary Book by Valère Moutarlier, Director, Direct Taxation Tax Coordination, Economic Analysis and Evaluation, DG TAXUD, European Commission.
3. Letter from the President of the European Parliament, David Sassoli
4. The Torino-Busan Declaration by the Global Tax Advisers Platform.

OPENING REMARKS

Pascal Saint-Amans

Director of the Centre for Tax Policy and Administration of the OECD

It is my great pleasure to deliver the OECD contribution to the 60th anniversary of the CFE. The collaboration between the CFE and the OECD is longstanding. The CFE has been actively following our work since its inception in 1959 - only a few years before the publication of the 1963 OECD Model Tax Convention. Up to 2008, the OECD delivered many projects as a standard setter in the field of international taxation; for example through many amendments to the OECD Model Tax Convention, the publication of the transfer pricing Guidelines in 1979 and in 1995 and subsequent amendment, and in many other areas (harmful tax practices, tax transparency etc.). That said, I would like to focus today on the past decade, which has resulted in fast pacing and profound changes in international taxation and on the new challenges ahead. Since 2008, the OECD, supported by the G20, has developed a very ambitious tax agenda to improve tax cooperation and transparency and ensure that MNEs pay their taxes where they carry on their activities.

The OECD has been the standard setter in both improving tax transparency and combatting Base Erosion and Profit Shifting (BEPS) by multinational enterprises (MNEs).

It is now taking on a new challenge to arrive to a consensus solution to address the tax consequences arising from the digitalisation of the economy. Changes are massive, notably for tax practitioners worldwide, as they must adapt to a new and constantly evolving environment.

The Reality of Tax Transparency in Practice

While 10 years ago, bank secrecy and opaque structures were used and abused by too many taxpayers across the world to hide their assets and income from tax administrations, bank secrecy for tax purposes no longer exists in 2019 and all financial centres are now engaged in the automatic exchange of financial information (through the OECD's Common Reporting Standard – CRS). Today, more than 4500 exchange of information agreements are in force with 90 jurisdictions implementing the CRS in 2018).

As a result, **47 million offshore accounts – with a total value of around 4.9 Trillion euros – have been exchanged for the first time. Over EUR 95 billion in additional revenue** (tax, interest, penalties) were collected from taxpayers coming forward through voluntary compliance mechanisms and from other offshore investigations.

Drawing on previous economic surveys, the OECD's preliminary analysis shows that bank deposits in international financial centres (IFCs) have fallen by approximately 34% over the past ten years for a decline of USD 551 billion. A large part of that decline is due to the onset of the automatic exchange of information, which accounts for about two thirds of that decrease. **Specifically, automatic exchange of information (AEOI) has led to a decline of 20% to 25% in the bank deposits in IFCs over the past decade.**

OPENING REMARKS

Pascal Saint-Amans
Director of the Centre for Tax Policy and Administration of the OECD

Closing the Loopholes of BEPS

Since the adoption of the OECD/G20 BEPS Package in 2015, the implementation of the standards to combat tax avoidance has been broad, consistent and is continuing through the G20/OECD BEPS Inclusive Framework.

The proper implementation of the BEPS Minimum Standards is being peer reviewed, and the below figures illustrate the magnitude of the legal and practical changes, which have strong implications for taxpayers and tax practitioners:

- **21 000** previously secret tax rulings have now been exchanged;
- **80 jurisdictions** have engaged in the exchange of **Country-by-Country reports (CBCR)** on the activities, income and assets of multinational enterprises, which began in June 2018;
- Preferential tax regimes allowed multinationals to avoid tax on their international activities, contributing to base erosion. Since 2015, **over 250 regimes have been reviewed** and virtually all of the regimes that were identified as harmful have been amended or abolished;
- With the **Multilateral Instrument to implement BEPS covering 88 jurisdictions** (including all the known treaty shopping hubs) and already ratified by 25, treaty shopping, which deprives countries of billions of euros in revenue, is also coming to an end.

Improving Tax Certainty

Tax certainty for taxpayers is an important component of investment decisions and can have significant impacts on economic growth. In 2016, the G20 Leaders called on the International Monetary Fund (the IMF) and the Organisation for Economic Co-operation and Development (OECD) to work on this issue. Wide range of activities relating to tax certainty is going on and the Update on Tax Certainty: IMF/OECD Report for G20 Finance Ministers and Central Bank Governors was issued in June 2019. Further work within the Forum on Tax Administration (FTA) is taking place to ensure members show there are positive signals that BEPS implementation is taking place in practice to seek greater consistency and tax certainty for both administrations and MNEs, in particular through closer collaboration on how they assess, identify and treat tax risk. Progress is also noted on Mutual Agreement Procedures (MAP).

Addressing the Tax Challenges Arising from the Digitalisation of the Economy

Technological innovation provides opportunities as well as challenges. In particular, digitalisation has driven considerable changes in the way business operates and led to the emergence of new business models. These changes have placed heavy pressure on the international tax system.

The BEPS Action 1 Report in 2015 in paragraph 376 under section 10.3 concluded that the digital economy raises broader tax challenges for policy makers that go beyond BEPS, and relate primarily to the allocation of taxing rights among different jurisdictions.

With many countries starting to act unilaterally, there is an urgent need to reach an agreement on a consensus solution. The G20 has agreed to seek a consensus-based solution to address the tax challenges of the digitalisation of the economy by 2020. To deliver on this, the 130 members of the OECD/G20 Inclusive Framework on BEPS have agreed on 28 May 2019 a Programme of Work on Addressing the Tax Challenges Arising from the Digitalisation of the Economy, endorsed by the G20 Finance Ministers and Leaders, to deliver, by the end of 2020, a solution to these challenges.

OPENING REMARKS

Pascal Saint-Amans
Director of the Centre for Tax Policy and Administration of the OECD

The G20/OECD Inclusive Framework on BEPS has identified two pillars, which could form the basis for consensus.

- The first pillar focuses on the allocation of taxing rights, and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules (Pillar 1).
- The second pillar focuses on the remaining BEPS issues and seeks to develop rules that would provide jurisdictions with a right to “tax back” where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to effective taxation at a rate lower than a minimum rate (Pillar 2).

The OECD/G20 Inclusive Framework is actively working on reaching an agreement on the architecture of a uniform approach at the beginning of 2020. The basis for a consensus based solution will draw on the principles and commonalities shared by the current proposals under Pillar One. Agreeing such a uniform approach would require a firm commitment by the members of the Inclusive Framework at a political level, but an early agreement on the architecture of a proposal would facilitate a focus on the required technical work. It would also require much further work to deal with a number of remaining issues (e.g. scope of the measure, modalities of implementation, etc.).

The business community, including the CFE and its members, is invited to provide its comments and contributions on this project during the public consultations, the next one of which will be organised before the end of 2019.

FOREWORD

Valère Moutarlier, Director, Direct Taxation
Tax Coordination, Economic Analysis and Evaluation, DG TAXUD, European Commission

As we approach the end of the current Commission mandate and start to prepare for a new one, it is the ideal time to reflect on the next steps for EU tax policy. It is the moment to consider what we have achieved over the past five years and what we want to achieve in the next five, and beyond. Planning the next agenda for taxation in Europe is a process that must be carefully balanced.

On one hand, there should be minimum disruption to the work already done or to the reforms which are still being implemented. On the other hand, procrastination is not an option in today's rapidly changing world, where globalisation, digitalisation and wider social change continue to undermine the more traditional structures around taxation.

The past five years have undoubtedly been the most dynamic period ever in EU tax policy. There are a number of reasons for this. Taxation became an area of increasing public interest, largely due to the financial crisis and a series of high profile media leaks.

This in turn fuelled a new political impetus around the agenda for fair and effective taxation, with a focus on delivering real results. In addition, Member States realised that, in the modern environment, taxation can no longer be treated in isolation. Its impact on economic, social, monetary, environmental and development policies has become increasingly apparent. So too has its influence on key priorities for Europe, such as competitiveness, job creation, social justice and sustainable resources. With this in mind, Member States gradually accepted that they have to work together on taxation if they are to face up to modern challenges and achieve their collective goals.

The result has been a number of significant and much-needed reforms in Europe – and beyond – in a very short space of time. These broadly fall into three categories.

First, we have created a robust new tax transparency framework and secured an unprecedented level of openness on tax matters across the EU. Member States have agreed to much greater administrative cooperation and information sharing – on both individuals and companies.

The first two Directives on Administrative Cooperation laid the ground for automatic exchange of a wide range of information on individuals' income – from employment and pension income to financial accounts. This was reinforced in 2017, following the Panama Papers revelations, to also cover information related to money laundering. Regarding companies' income, further amendments to the Directive ensured the automatic exchange of information on tax rulings and multinationals' accounts.

FOREWORD

Valère Moutarlier, Director, Direct Taxation
Tax Coordination, Economic Analysis and Evaluation, DG TAXUD, European Commission

Meanwhile, advisors will also be required to disclose key information from 2020 onwards, to complete the transparency framework.

Second, we have substantially reinforced Member States' defences against tax abuse. The Anti-Tax Avoidance Directives (ATAD 1 & 2) contain five legally binding measures that all Member States must implement to fight aggressive tax planning. Three of these measures are already in place – CFC rules, interest limitation and the general anti-abuse rule. The other two – exit taxation and hybrid mismatch rules - will be progressively applied from 2020. With the ATAD, all Member States must now apply the same basic anti-abuse rules in a common manner, ensuring better protection for the Single Market and a more consistent environment for cross-border businesses. In a similar vein, newly agreed VAT reforms will help to reduce fraud by up to 80% and reduce the VAT gap which currently stands at around €150 billion.

The result of all these measures will be important revenue increases for public budgets, and a boost in overall taxpayer morale. We have upped our game in the fight for fair competition and a level playing field – through the Code of Conduct Group's peer reviews, the Commission's active state aid policy and the EU list of non-cooperative tax jurisdictions. The result is an overall increase in good governance standards – within the EU and
globally – and a fairer tax environment for all EU Member States and companies.

Third, we have done important work during this mandate to improve the business climate for companies across Europe. The Double Taxation Dispute Resolution Mechanism, agreed in 2017, addresses one of the biggest problems that cross-border businesses face today. Thanks to this new legislation, companies will enjoy a quicker, more definitive and more cost-effective procedure to address cases of double taxation in the Single Market. New VAT rules will also bring big improvements for businesses, by simplifying compliance procedures and ensuring that the system is better aligned to the needs of e-commerce.

Despite these success stories, the work started in this mandate is not finished yet. The Common Consolidated Corporate Tax Base – the most ambitious of all tax reforms – still sits on the negotiating table. Member States have failed to reach consensus so far, even though the CCCTB offers the chance to make the Single Market substantially more competitive and attractive from a tax perspective. Likewise, there is no sign of agreement yet on the VAT Definitive Regime, even though it would drastically reduce administrative burdens for businesses, cut down on fraud and simplify processes for tax administrations.

The common obstacle in both cases is the need for unanimous agreement on any tax file at EU level. As set out in the Commission's Communication last January, the unanimity rule appears now to be outdated and counter-productive. In this day and age, one or two Member States should not be able to block real progress in EU tax policy, to the detriment of all the others and at a cost to the Single Market.

The Commission has opened the debate on whether unanimity in taxation is still defendable in our modern climate, and Member States now need to take this issue forward. Indeed, now is the right time for such a debate, as we enter a new period for EU tax policy.

FOREWORD

Valère Moutarlier, Director, Direct Taxation
Tax Coordination, Economic Analysis and Evaluation, DG
TAXUD, European Commission

The future agenda will be shaped by many different considerations – political motivations, global developments, public demands and economic needs. However, a few major themes can already be identified, based on issues that need to be urgently addressed.

First, questions around the taxation of the digital economy will continue to grow and develop. The Commission kick-started the work in this area in 2018 with two practical proposals. Although no consensus has been reached on these proposals in Council, they put the EU in "first mover" position on digital taxation and injected more momentum into the international work in this area. This is now charging ahead at full speed, and the discussion has become much wider than simply a quest to solve the digital dilemma. The whole global framework for international taxation is now being examined, to make it fairer, more effective and better fit to tomorrow's world. The G20 has promised to present solutions by the end of 2020, and the EU will be at the forefront in steering this work.

The second trend that is clearly emerging is the heightened focus on energy and climate change. Taxation will be central to the wider policy decisions in these areas. The "polluter pays" principle is more relevant than ever and should be reflected at every level. At the same time, the social and economic consequences of new tax measures also need to be carefully considered. There is no doubt that the new Commission will need to give high priority to finding balanced and workable solutions in this area.

Finally, we cannot ignore the calls from both businesses and tax administrations for a simpler and more stable tax landscape. Tax certainty has been on the agenda for some time now, but is likely to become an even higher political priority in the years ahead.

Obviously, work will continue on the level playing field and fair competition – both of which are crucial for a healthy business environment. However, greater focus may also be needed on the other challenges that companies face, whether this is double taxation, administrative complexities or high compliance costs.

Likewise, tax administrations could cooperate more closely and develop common tools to improve tax certainty, reduce disputes and encourage good tax practices. If increased tax certainty can bring more investment and increased compliance, then everyone is a winner. So it is a goal we should pursue with vigour.

The past 5 years have seen a paradigm shift in EU tax policy, in terms of the level of ambition, the scope of the objectives and the pace of change. This should continue in the years ahead, even if the political attention shifts to new areas.

CFE has been a prominent and constructive actor in the EU's tax arena for many years now. Its contributions to consultations, submission of well-researched position papers and its membership in the Platform on Tax Good Governance are just a few of the ways in which it has brought its views and ideas to our attention.

This Commission relies heavily on vocal, active and knowledgeable stakeholders for well-informed policy-making and CFE certainly meets this description.

As we move forward now, towards a new mandate and a renewed agenda for taxation policy in Europe, I am sure that CFE will continue to liaise closely with the Commission and make its mark.

European Parliament

The President

D 312670 30.09.2019

Mr Aleksandar Ivanovski
Confédération Fiscale Européenne (CFE – Tax Advisers Europe)
Avenue de Tervueren 188A
1150 Brussels
BELGIUM

Dear Mr Ivanovski,

Thank you for your online application of 3 September 2019 seeking the patronage of the European Parliament for the 60th anniversary of the *Confédération Fiscale Européenne* – CFE Tax Advisers Europe to be held in Turin on 4 October 2019.

The European Parliament very much admires the aim of your initiative, which is to present the goals of your organisation from its beginnings 60 years ago and to examine the close relationships forged with the European institutions over the years.

As you are aware, the power to tax is in the hands of the Member States, with the European Union having only limited competences. However, as EU tax policy is geared towards the smooth running of the single market, the harmonisation of indirect taxation, and the fight against harmful tax evasion and tax avoidance, have become EU policy priorities. In this framework, and in the context of other policies, the consultation and the exchange of information on national tax laws and practices, and on the coordination and development of tax law in Europe between national tax advisers, and between national tax advisers and the European institutions, are both necessary and extremely useful.

For that reason, the institution I have the honour to preside over greatly appreciates the professional and committed work of your organisation. It also highly values your activity as an important partner in the last European elections campaign.

It is therefore with great pleasure that I grant your event the European Parliament's patronage[1].

May I take this opportunity to wish you every success with what should be an excellent event.

Yours sincerely,

David Maria SASSOLI

[1] Events receiving patronage should highlight this fact in any communications and publicity, using the wording 'under the patronage of the European Parliament' and the European Parliament logo. The terms of use, Parliament's Graphics Guide and Parliament's logo are available from the Visual Identity Service, Directorate-General for Communication (visualidentity@ep.europa.eu) or from the European Parliament's Download Centre at http://www.europarl.europa.eu/downloadcentre/en/visual-identity. Please note that communications concerning the event, including web content, should clearly distinguish the Parliament's role as an institutional partner providing moral support from any providers of financial support. For more information, see www.europarl.europa.eu/patronage.

GTAP tax advisers global platform

4 SHORT-TERM PRIORITIES

IN INTERNATIONAL TAXATION

THE TORINO-BUSAN DECLARATION

[3 OCTOBER 2019]

AOTCA

CFE tax advisers europe

THE TORINO-BUSAN DECLARATION

GTAP is an international organisation uniting tax professionals from around the world. The term "tax professionals" includes persons engaged at professional level with tax consultancy, as lawyers or as accountants, and accredited as such pursuant to applicable national law, irrespective of membership of GTAP.

The principal purpose of GTAP is to promote the public interest by ensuring the fair and efficient operation of national and international tax systems including recognition of the rights and interests of taxpayers and the role of tax professionals. To this end, GTAP provides the forum for the regular meeting, exchange programme, dialogue and interaction of tax experts from all continents.

On the occasion of the coinciding GTAP meetings in Torino and in Busan, **GTAP is hereby defining 4 key short-term priorities for the pursuit of its principal purpose and aspiring to contribute and shape contemporaneous developments in global taxation.**

GTAP tax advisers global platform

AOTCA CFE tax advisers europe

THE TORINO-BUSAN DECLARATION

1. Tax for Growth

Welfare and progress of the global community presupposes continuous development at a sustainable rate. Taxation is one of the main factors influencing growth and development. It has been evidenced that the distribution of the tax burden can encourage or discourage economic development. Moreover, tax policy determines the key direction of development, e.g. from gender-responsive & equality-promoting policies to sustainable environmental protection.

Constructing a global tax framework that encourages stable economic growth, widely diffused around the globe and oriented towards improvement of living conditions for all is one of GTAP's principal aspirations.

Developing countries, and the rate of economic growth, are particularly affected by the new trends in international taxation. Working together, we are committed to promoting inclusive and growth-inducing taxation policies. In particular, we share the commitment to improving tax morale as a policy course of action with the most meaningful impact on capacity building and economic growth.

GTAP members aspire to promote policies on increased tax certainty and voluntary compliance as a means for improved tax good governance.

THE TORINO-BUSAN DECLARATION

2. Tax and Climate Change – Sustainable Tax Policies

Climate changes affects us all. Indeed, the intention of a carbon tax is environmental, to reduce emissions of carbon dioxide and thereby slow climate change. GTAP members aspire to share their unique knowledge on tax with governments and other international stakeholders in the process of transition to a low carbon global economy.

Tax policy is a key tool to internalise environmental costs and foster the transition to a low carbon economy, for the generations to come. Future-proof tax systems are an equilibrium between today's public finance needs and tomorrow's sustainable policies.

GTAP tax advisers global platform

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THE TORINO-BUSAN DECLARATION

3. Tax and Digitalisation

Today, growth is defined largely within the digital framework. Digital technologies have become an integral part of business and everyday life and their impact is expected to expand over time. Therefore, a global approach to dealing with the digital side of the economy is essential.

Digitalisation is simultaneously advancing and disrupting trends in technology, transportation, education and healthcare. Identifying tax rules that can inspire consensus of national legislators around the globe is essential to foster this digital era for the service of humanity. In the area of taxation, digitalisation exacerbates the perceived mismatch between where the value is created and where taxes are paid, which affects the perception of fairness in our tax systems, across borders and nations. Therefore, these significant cross-jurisdictional issues merit a global response, whilst the new "single global tax jurisdiction" demands rules of broad consensus.

We are ready to embrace this change. Due to the fast-paced change of the digital environment, today's solutions must be future-proof and consistent with the principle of aligning profit with underlying economic activities and value creation. GTAP calls for a coordinated international tax policy response to the challenges posed by digitalisation.

tax advisers global platform

THE TORINO-BUSAN DECLARATION

4. Taxpayers' Rights and Certainty in a Fast-Paced World

Sustainable growth is contingent on effective tax compliance. As such, taxpayers' active and willing compliance ensures more efficient collection of sufficient resources, necessary for fulfilment of the social contract between citizens and governments. When taxpayers' rights are not sufficiently guaranteed, taxpayers' active and willing compliance is undermined. A tax framework that cannot adequately address the current evolving reality results in uncertainty at the expense of tax compliance and economic growth.

Consequently, in a dynamic global economic framework, taxpayers' rights should serve as a beacon of certainty. Certainty with equity, simplicity, and convenience have been noted as the ingredients of an efficient tax system.

GTAP underlines the fundamental importance of taxpayers' rights for tax good governance, and the role played in this respect by the statements of taxpayer, and tax administration, rights and obligations.

To this end, GTAP members urge governments and international bodies to promote a "fundamental right of tax certainty". This right is promulgated in the Model Taxpayer Charter, an initiative of GTAP organisations, CFE Tax Advisers Europe, AOTCA and STEP.

GTAP tax advisers global platform

AOTCA

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Founders:

CFE

CFE tax advisers europe

AOTCA

AOTCA Asia Oceania Tax Consultants' Association

WAUTI

WEST AFRICAN UNION OF TAX INSTITUTES (WAUTI)
UNION DES ORDRES FISCAUX DE L'AFRIQUE DE L'OUEST (UDOFAO)

Observers:

IAFEI

STEP

AMA

CDPT

CENTRO DI DIRITTO PENALE TRIBUTARIO
CENTRE DE DROIT PENAL FISCAL
CENTER FOR CRIMINAL TAX LAW

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JULY - DECEMBER 2019

Strategic Partnership with European Parliament

In October 2019, CFE Tax Advisers Europe celebrated its 60th Anniversary under the high patronage of the European Parliament, with a series of events, including a General Assembly, the inaugural Global Tax Advisers Platform conference and technical committee meetings held in Torino, Italy, on 3 and 4 October 2019, hosted by the Italian member organisations of CFE - Associazione Nazionale Tributaristi Italiani (ANTI) & Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC).

The CFE Tax Advisers Europe was honoured to receive the patronage of the European Parliament of its 60th Anniversary, confirming the close links between the objectives of CFE's initiatives and the values of the European Union.

Meetings & Events

The 23rd Intra-European Organisation of Tax Administrations (IOTA) General Assembly

Ian Hayes, Chair of the CFE Tax Technology Committee, was invited to attend the 23rd Intra-European Organisation of Tax Administrations (IOTA) General Assembly in Brussels from 2 to 4 July. On the Technical Session, attendees strived to answer the question "Are tax administrations ready for the tax official of tomorrow?".

European Economic and Social Committee Seminar

The European Economic and Social Committee Seminar took place on 5 July in Brussels. Aleksandar Ivanovski, CFE Tax Policy Manager, attended the seminar representing CFE Tax Advisers Europe.

CFE Academy Records 1st edition of the E-Learning Courses in Cooperation with CNDCEC

CFE Tax Advisers Europe and the Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC) signed a Memorandum of Understanding to cooperate in e-learning courses (building on the CFE's academic activity developed to enhance skills and competence of the European accountancy profession). The goal was to contribute to the e-learning platform available to CNDCEC members (the parties agreed to organize 4 online courses of 20 hours each on international taxation) on European and international tax topics. The first course was successfully recorded in July 2019 in Milan, Italy, on the topic of International and EU Taxation and Tax Policy, including a record of attendance by CNDCEC members immediately in the first week of release of the e-learning course in the platform.

The lectures were given by academic speakers and practitioners associated with CFE.

CFE Tax Advisers Europe meeting with the Chamber of Tax Advisers of the Czech Republic and the Institut des Experts-Comptables et des Conseils Fiscaux

On 6 September 2019, CFE Tax Advisers Europe met with the Chamber of Tax Advisers of the Czech Republic and the Institut des Experts-Comptables et des Conseils Fiscaux in Brussels. At the meeting, CFE Tax Policy Manager Aleksandar Ivanovski had the opportunity to discuss the CFE's priorities for the technical committees and strengthen relationships with CFE members.

CFE Tax Advisers Europe meeting with CIOT European Branch in Milan

On 18 September 2019, CFE Tax Advisers Europe met in Milan with representatives of CIOT European branch, including also the participation of CFE Vice President, Gary Ashford, to discuss Geopolitics and Taxation (in the morning) and "Tax Advisers for International Tax Structures" (in the afternoon). The event was held in cooperation with CDPT – Centro di Diritto Penale Tributario.

Global Tax Advisers Platform Global Conference and the Torino-Busan Declaration

In 2019, the Global Tax Advisers Platform (GTAP) held the inaugural Global Conference, in Torino, Italy, on Thursday 3 October 2019 on the topic of "Tax and the Future", with more than 120 participants from 4 different continents in attendance.

The conference addressed the future of global tax policy, the future of corporate income tax and VAT, the future of the global tax profession and the future of business models and tax sustainability.

Notably, at the GTAP Global Conference, the GTAP members and observers signed the Torino-Busan Declaration. In this document, GTAP sets out four key short-term priorities to pursue the promotion of public interest by ensuring the fair and efficient operation of national and international tax systems. The four priorities highlighted in the Declaration are tax for growth, sustainable tax policies, tax and digitalisation, taxpayers' rights and certainty in a fast-paced world. The declaration was first signed at the GTAP Global Conference, and again on 17 October 2019 in Busan, South Korea, on the occasion of the 2019 International Tax Conference of the Asia Oceania Tax Consultants' Association (AOTCA).

CFE Tax Advisers Europe General Assembly

The 60th year anniversary CFE General Assembly took place on 4 October 2019 in Torino, Italy, hosted by the Italian member organisations of CFE - Associazione Nazionale Tributaristi Italiani (ANTI) & Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC) including an address by Pascal Saint-Amans (OECD) and by Bert Zuijdendorp (EU).

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration addressed the General Assembly, highlighting the long-standing collaboration between the CFE and the OECD. Mr Saint-Amans remarked that CFE has been an active contributor to OECD's work since its inception in 1959 – only a few years before the publication of the 1963 OECD Model Tax Convention. Mr Saint-Amans welcomed CFE's recent contributions to OECD's public consultations and presented the upcoming OECD agenda on the taxation challenges of the digital economy.

Representing the European Commission, **Bert Zuijdendorp**, Head of Company Taxation Initiatives, DG TAXUD, thanked CFE for its contribution to the taxation policy work of the European Commission over the years and discussed the important role stakeholders play in the taxation policy initiatives of the EU. Mr Zuijdendorp also reflected on the synergy of the work undertaken by the OECD and the EU.

At the meeting, CFE presented to delegates the 2 finalised commemorative books that were published in order to celebrate CFE's 60th Anniversary: the 60th Anniversary Book and the Liber Amicorum.

CFE Academy Lecture at the 95th Anniversary of the National University of Commerce and Business of Mongolia

On 11 October 2019, the CFE President was invited as keynote speaker, on the occasion of the 95th Anniversary of the National University of Commerce and Business of Mongolia, to the international conference under the theme "Trade and Sustainable development-IV".

CFE Academy Training to the Mongolian Association of Certified Tax Consultants

The CFE Academy held a second training lecture with the Mongolian Association of Tax Advisers in Ulaan Baatar (Mongolia) on 12 October 2019, which included the participation of more than 100 Mongolian tax advisers.

AOTCA General Meeting & International Tax Conference in Busan

Piergiorgio Valente, President of CFE Tax Advisers Europe and Chairman of the Global Tax Advisers Platform (GTAP), attended AOTCA's 17th General Meeting & participated as speaker at the International Tax Conference held in Busan, South Korea, on 16 – 18 October 2019.

Piergiorgio Valente represented CFE at the GTAP meeting held on 16 October, and also met with the Asia Oceania Tax Consultants' Association (AOTCA) Council and General Assembly. The meetings and event were hosted by the Korean Association of Certified Public Tax Accountants.

49th IAFEI World Congress

CFE President Piergiorgio Valente participated as a speaker at the 49th IAFEI World Congress, held on 25 and 26 October 2019 in Matera, Italy, entitled "*Culture, value for the economy and guide in the evolution of organisational and development models".*

The International Tax Specialist Group (ITSG) Conference

On 6 and 7 November 2019, CFE President Piergiorgio Valente, CFE Vice-President Gary Ashford and CFE Secretary General Martin Phelan attended as speakers the International Tax Specialist Group (ITSG) Conference in Dubai. The conference covered topics such as bitcoin, the Apple Case and tax morale, and it was an excellent occasion of debate.

Compliance and Good Tax Practices Congress

The Chair of the CFE Fiscal Committee Stella Raventós-Calvo participated as a speaker at the Compliance and Good Tax Practices Congress, held on 13 November 2019 in Barcelona, Spain.

The CODIS Convention

CFE President Piergiorgio Valente spoke on transfer pricing at the 13th CODIS Convention, a key event in Milan with the tax authorities, eminent scholars and tax advisers. The convention, entitled "The tax of today and tomorrow: confrontation on tax issues in a rapidly evolving context" was held on 14 November 2019 in Milan, Italy.

OECD Public Consultations on the Secretariat Proposal for a 'Unified Approach' under Pillar One & Pillar Two

The OECD consultation meeting on the Secretariat Proposal for a 'Unified Approach' under Pillar One was held in Paris, France, on 21 & 22 November. The meeting was attended by Aleksandar Ivanovski, CFE Tax Policy Manager. A second public consultation took place in Paris on 9 December concerning the OECD Global Anti-Base Erosion Pillar 2 Proposal. CFE issued Opinion Statements responding to both consultation papers.

Italia-Africa Business Week

CFE Tax Advisers Europe was pleased to once again be a partner once of the Italia-Africa Business Week held on 26 – 27 November in Milan, Italy. The conference gathered more than 300 attendees to discuss business development, international cooperation and more. CFE President Piergiorgio Valente participated in a roundtable on "Customs and trade between Africa and Italy".

12th European Conference on Tax Advisers' Professional Affairs

The 12th European Conference on Tax Advisers Professional Affairs, hosted by CFE Tax Advisers Europe and the Institut des Avocats Conseils Fiscaux (IACF), was held in Paris, France, on Friday 29 November 2019, this year entitled "Making Anti-Money Laundering More Effective For Tax Advisers".

The conference examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context, and the overall effect this has on tax evasion.

CFE Participation to the ETAF Conference

On 5 December 2019, CFE President Piergiorgio Valente was invited to join the ETAF conference as speaker and participate in the roundtable on the topic "Exploring the potential between the EU and the OECD in tax policy", engaging in interesting discussions with fellow panellists Bernardus Zuijdendorp, Head of Unit Company Taxation Initiatives at DG TAXUD, European Commission and Marek Belka, Member of the European Parliament, S&D, Poland.

Technical Releases

Joint Committee Statements:

The Committees of CFE Tax Advisers Europe published 2 joint Opinion Statements in the second semester of 2019:

- **Opinion Statement CFE 2/2019** on the OECD Consultation on a Unified Approach under Pillar One;
- **Opinion Statement CFE 3/2019** on the OECD Consultation on a Unified Approach under Pillar Two.

Fiscal Committee Opinion Statements

In July, the Fiscal Committee of CFE Tax Advisers Europe published 1 Opinion Statement:

- **Opinion Statement FC 2/2019** concerning the implications of the decision of the Court of Justice of the EU in case C-132/16 *Iberdrola* on input tax deductions.

Professional Affairs Committee Opinion Statements

In November, the Professional Affairs Committee of CFE Tax Advisers Europe published 1 Questionnaire:

- **Professional Affairs Committee Survey** on the Project Taxpayer's Rights and Charters.

ECJ Task Force Opinion Statements

The ECJ Task Force of CFE Tax Advisers Europe published 2 Opinion Statements between July to December 2019:

- **Opinion Statement ECJ-TF 3/2019** on the CJEU decision of 22 November 2018 in Case C-575/17, *Sofina* and others, on withholding taxes, losses and territoriality.
- **Opinion Statement ECJ-TF 4/2019** on the CJEU decision of 26 February 2019 in Case C-135/17, *X-GmbH*, on the German CFC rules and third countries.

EU Tax Policy Report

The EU Tax Policy Report is a bi-annual publication which provides a detailed analysis of significant primary law and tax policy developments at both EU and international level that have occurred in the previous six months which would be of interest to European tax advisers. It also includes an overview of selected CJEU case-law and relevant European Commission decisions.

In July, CFE published the Tax Policy Report covering the period of January to June 2019, and in January 2020 CFE will publish the Tax Policy Report covering the period of July to December 2019.

External Publications

The leading European tax law journal European Taxation, published by IBFD, regularly publishes articles on CFE conferences and selected Opinion Statements of particular relevance.

The following are a list of the articles and Opinion Statements published by European Taxation from July to December 2019:

- **The Opinion Statement FC 1/2019** CFE Response to the OECD Consultation Document: Addressing the Tax Challenges of the Digitalising Economy. Published in Volume 59 – Number 8 - 2019.
- **Opinion Statement ECJ-TF 1/2019** on the CJEU decision of 31 May 2018 in Case C-382/16, *Hornbach-Baumarkt*, concerning the application of transfer pricing rules to transactions between resident and non-resident associated enterprises. Published in Volume 59 – Number 9 – 2019.
- **Opinion Statement ECJ-TF 2/2019** on the CJEU decisions of 26 February 2019 in Cases C-115/16, C-118/16, C-119/16 and C-299/16, N Luxembourg I et al, and Cases C-116/16 and C-117/17, *T Danmark et al*, concerning the "beneficial ownership" requirement and the anti-abuse principle in the company tax directives. Published in Volume 59 – Number 10 – 2019.
- **Opinion Statement CFE 1/2019** on European Tax Advisers' Policy Priorities for the EU Mandate 2019-2024.

- **Opinion Statement FC 2/2019** concerning the implications of the decision of the Court of Justice of the EU in case C-132/16 *Iberdrola* on input tax deductions.

In addition to the above, CFE President Piergiorgio Valente published an article entitled “International Tax Dispute Resolution: New EU Rules”, discussing how international tax disputes arise and how the mutual agreement procedure framework has changed in the last few years. The article was published by the International Association of Financial Executives Institutes (IAFEI).

The CFE President has also written a chapter in IBFD’s book “Taxing the Digital Economy – The EU Proposals and Other Insights” on digital services tax (DST), where he makes critical remarks about the DST proposals.

Forthcoming Events

CFE Networking Dinner and Technical Meetings

CFE Tax Advisers Europe organises an invitation-only annual tax dinner each year, which provides the opportunity to strengthen relationships with colleagues and counterparts, and expand engagement beyond formal policy meetings on technical issues. Attendees are able to exchange views in an informal setting with members of the European Commission working in relevant areas, such as Directorate-General for Taxation and Customs Union (DG Taxud), Members of the European Parliament with a particular interest in tax and Members of the Council of the European Union.

The next CFE Networking Dinner will be held at the Hotel Amigo on 30 January 2020 in Brussels and the CFE Technical Committee meetings will take place on 31 January 2020.

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EU Tax Policy Report

July – December 2019

AUTHORS
Aleksandar Ivanovski and Brodie McIntosh

DATE ISSUED
29 January 2020

CFE's EU Tax Policy Report provides a detailed analysis of primary tax policy developments at EU level of interest to European tax advisers. It also includes an overview of relevant CJEU case-law European Commission decisions covering the first half of 2019.

Highlights

In the second semester of 2019, the Brussels-bubble was focused on the the announcement and subsequent hearings of new Commissioners designated by President Ursula von der Leyen after the EU elections, and the EU institutions were in a transition period, meaning there were fewer policy developments than usual from the EU institutions. CFE Tax Advisers Europe took the opportunity to review the tax and professional affairs policy issues it identifies as significant concerning taxation and the future whilst EU institutions were considering the policy priorities for the next mandate, and published an Opinion Statement that sets out the policy priorities of European tax advisers for the 2019 – 2024 mandate of the EU Institutions.

The elected European Commission/College of Commissioners led by President Ursula von der Leyen took over from Jean Claude Juncker on 1 December 2019, becoming the first woman to lead the EU 'government'. As concerns tax priorities Ms von der Leyen has committed to introducing a carbon border tax, to achieve fair taxation of "big tech companies" as a "priority" by working "hard to ensure the proposals [for an EU digital tax] currently on the table are turned into law" on the basis that "by the end of 2020 [if] there is still no global solution for a fair digital tax, the EU should act alone." Ms von der Leyen has also vowed to "make use of the clauses in the Treaties that allow proposals on taxation to be adopted by co-decision and decided by qualified majority voting in the Council" for progressing a European common consolidated corporate tax base and in the fight against tax fraud. A New Green Deal for Europe that includes introducing Carbon Border Tax, revised Energy Taxation Directive and extension of the European Emissions Trading System (ETS) to reduce the airline carbon allowances is also a high priority for the new Commission.

As to the files to watch in the upcoming semester, Croatia, who hold the Presidency of the Council of the European Union from 1 January 2020 to 30 June 2020, recently published documents setting out its priorities for the Presidency period. In relation to specific taxation priorities, the Presidency Programme sets out Croatia's aims that "current international tax rules should be adapted to globalisation and digitalisation in order to ensure fair and just taxation where value is created. Additionally, the tax system should fight activities and introduce higher taxes on products whose adverse effects significantly contribute to climate change. A modern tax system should be based on transparent, efficient and sustainable taxation procedures that ensure legal certainty for all stakeholders." Additionally, Croatia is committed to bolstering customs administration on the EU external borders. As always, CFE Tax Advisers Europe will be involved in the developments.

Contents

Taxation of the Digital Economy

01

Taxation of the Digital Economy: A Whole New World…Order for Taxation under the OECD Pillars?

OECD Pillar One & Two Proposals & Public Consultations

Pillar I

In October 2019, the OECD published Secretariat proposals for taxation of the digitalising economy on basis of a 'unified approach' under Pillar One. Under the proposed approach, new taxation rights for market jurisdictions are recognised as a matter of novelty. Conversely, under present international tax rules, zero profit could be allocated to any nexus not based on physical presence. The new rules are intended to apply to companies that derive value from consumer-interaction with users in market jurisdictions. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, through formulary apportionment and use of proxies such as sales.

A public consultation took place at the OECD in Paris on 21 November where attendees addressed the substantive issues arising from the proposal, in particular scope and nexus, elimination of double taxation as well as dispute prevention and resolution. There was an emerging consensus that the new challenges arising from digitalisation were conducive to a shift toward formulary apportionment, however, discussions could not agree on the precise principles underpinning such a shift. In addition, there was criticism concerning the lack of clear principles justifying the departure from the arm's length principle; that the absence of a coherent rationale might potentially undermine the goal to achieve fairness with the new profit allocation rules. Generally, clarity is lacking on definitions such as residual profits, business within scope of the proposal, the viability of the proposed coexistence of the two systems (existing tax rules under Amount B and C vs. new nexus and taxing rights under Amount A), as well as guarantees for robust and effective dispute prevention and resolution mechanisms. Suggestions for a central coordinating jurisdiction or one-stop-shop, with a possibility for a single jurisdiction to collect and remit the tax due for the other jurisdictions involved were also discussed.

CFE issued an Opinion Statement responding to the consultation highlighting a number of key elements that should be embedded as part of this process, calling for more clarity and early consensus at political level as to the outcome of the process. CFE's statement emphasises the significance of departing from well-established principles of international tax law towards a more complex international tax system which partly introduces formulary apportionment.

Pillar II

The OECD on 8 November published a further public consultation document concerning Pillar Two of its two-pillar approach to addressing the taxation challenges of the digitalising economy, the so-called "Global Anti-Base Erosion Proposal", or "GloBE" proposal, which seeks to address outstanding BEPS issues by introducing a global minimum tax and providing "jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation". The approach seeks to apply an income inclusion rule and deduction denial in tandem to achieve the intended aim of global anti-base erosion.

A second public consultation took place at the OECD in Paris on 9 December concerning the OECD Global Anti-Base Erosion Pillar 2 Proposal. CFE issued an Opinion Statement responding to the consultation setting out its view that there are too many variables in the GloBE proposal, with ramifications that could arise from the open policy and key design questions, calling for more certainty, simplicity and absence of double or multiple taxation. Issues were identified relating to double tax treaties, lack of dispute resolution and, significantly, possible EU law challenges.

Additionally, to evaluate the full effect of the existing BEPS standards, some of which are still under implementation in most countries of the Inclusive Framework, stakeholders have generally stated that a longer-term perspective seems more appropriate to appreciate the entirety of the remaining BEPS issues. Within the EU a number of anti-BEPS policy and legislative measures have been introduced with the ATAD directives, which significantly reduce the incentives to shift mobile tax bases to low-tax jurisdictions. Consequently, more time should be allowed to evaluate the full effect of the BEPS-related anti-avoidance measures, before any such complex rules are introduced.

Trade Wars, Threats & Safe Harbours…

Work at government representative level is ongoing at the OECD, with the Secretariat proposal serving as a blueprint for further negotiations. However, the anticipated timeline for progress concerning the OECD proposals may be compromised by the recent position adopted by the US in its letter to the OECD in December 2019, suggesting the Pillar 1 proposals should apply merely as a safe-harbour.

Were the Pillar 1 proposals to take the form of a safe harbour, this would allow governments to choose to adopt the regime, as opposed to it being mandatory to adopt it. If the approach were to be mandatory for the countries signing up, as was planned up until the US letter being sent, this would become mandatory for example by way of signing a new MLI. It would appear that the US is now proposing the measure be designed as a "safe harbour", meaning that companies could choose to apply or ignore Pillar 1.

In her response to the US letter, Angel Gurria, Secretary-General of the OECD, stated that “throughout the extensive consultation process, however, we had so far not come across the notion that Pillar 1 could be a safe-harbour regime”, emphasising that the public consultations held to date “clearly identified the need for greater tax certainty and administrability”, noting that this “is why the OECD proposal on a “Unified Approach” contains a very strong tax certainty dimension”. The letter notes that the US raising this issue may impact on the ability of the OECD to adhere to the deadlines agreed by the Inclusive Forum. The US proposition to make Pillar One optional by allowing companies to ‘opt out’ of the newly proposed profit allocation rules continues to create tensions among governments and “will not fly politically”, OECD Tax Director Pascal Saint- Amans has said.

All eyes are following the developments closely, especially in Europe. President Von der Leyen has made fair taxation a priority for her Commission, promising the EU will act alone should work at OECD level fail to result in an international agreement on how to tax digital companies.

In the meantime, tariffs have been threatened by the US against France following a French digital tax being signed into law on 24 July 2019, which imposes a 3% digital services tax on resident and non-resident companies with a global turnover above 750 million Euros, and a national turnover above 25 million Euros. Following meetings between French, EU and US officials at the margins of the World Economic Forum elite gathering in Davos in January 2020, Bruno Le Maire, Minister of Finance of France, and Steven Mnuchin, the US Treasury Secretary, alongside OECD Secretary-General Angel Gurria agreed to avoid a potential trade war following the introduction of the French Digital Services Tax. The US side agreed to suspend the imposition of tariffs on French goods whilst France agreed not to collect the digital tax until the end of 2020, subject to an OECD agreement by the end of year.

Similarly, the US threatened to scrap trade negotiations for a post-Brexit free trade agreement after the UK published a policy paper in July 2019 concerning a digital services tax to apply to businesses making search engines, social media platforms or online marketplaces available to UK users.

Progress on the issue of taxation of the digital economy in both the EU and at the OECD level will remain an ongoing priority for CFE.

EU Policy – Direct Tax Files

02

Carrot & Stick: Company Law & Whistleblowers Directives Become EU Law

Company Law Directive Enters into Force

On 18 November 2019, the Council of the EU adopted the second of two Commission proposals initially published in April 2018 on reforming and digitalising EU company law, which aim to make it easier for companies to merge, divide or move within the EU Single Market, whilst preventing fraud and abusive behaviour in cross-border operations. The proposals were adopted by the EU Parliament in April 2019.

The rules allow companies to register, set up new branches or file documents online. As concerns cross-border conversions, mergers and divisions, the EU rules for cross-border conversions and divisions aim to update existing ones to facilitate reorganisation, provided that the operations are genuine. Companies will be required to inform employees on the legal and economic consequences of a cross-border operation, and the Directive introduces mandatory anti-abuse control procedures to prevent cross-border operations which have abusive, criminal or fraudulent aims. This requires companies to demonstrate genuine economic activity at the place of registration, in line with the decision of *Cadbury Schweppes*. National authorities will be enabled by the provisions of the Directive to block any cross border operations carried out for fraudulent aims.

The Directive was published in the Official Journal of the European Union on 12 December, and entered into force on 1 January 2020. Member States will have 36 months to adopt necessary measures for implementation of the Directive, i.e. until 31 January 2023.

EU Whistleblowers Directive Enters Into Force

The European Parliament and Council Directive on the protection of persons who report breaches of Union law entered into force on 16 December 2019. The Directive establishes EU-wide rules for the protection of whistleblowers who report on breaches of EU law, including those reporting on issues related to tax fraud and money laundering.

The Direcitive states that in respect of disclosures concerning taxation, the Directive aims to “add to recent Commission initiatives aimed at improving transparency and the exchange of information in the field of taxation, and creating a fairer corporate tax environment within the Union with a view to increasing Member States’ effectiveness in identifying evasive and/or abusive arrangements, and would help deter such arrangements.”

The directive will provide those persons reporting on breaches of EU legislation with internal and external reporting procedures for whistleblowing, subject to the size of the company. Companies and authorities will also have feedback obligations, such that they have 3 months to respond to whistleblower reports under the proposal.

The directive also includes provisions which forbid all forms of retaliation, to be enforced by means of sanctions. Whistleblowers are also to be provided with access to free independent information, advice, legal aid and remedies in instances where retaliation is experienced, with the burden of proof to be reversed such that the organisation or person must prove they are not acting in retaliation against the whistleblower, as well for as financial and psychological support to be provided to the whistleblower.

In July 2018, the CFE issued an Opinion Statement on the EU Commission proposal, which set out CFE's support for proposals that seek to establish horizontal rules for protection of whistleblowers, as well as their role in advancing public policy interests, specifically reporting tax fraud, corruption, abusive and illegal practices.

Member States have until 17 December 2021 to implement the Directive into national law. Concerning companies in the private section with 50 to 249 employees, Member States have until 17 December 2023 to implement rules into national legislation, to comply with the obligation to establish internal reporting channels.

Public Country-by-Country Remains on Council to-do List...

Despite the Finnish Presidency's intent to re-enliven discussion on the Romanian EU Presidency presidency compromise text on the revised proposal for public country-by-country reporting (CbCR) in the EU, no significant progress appears to have been made at Council level.

However, the European Parliament voted on 24 October 2019 a resolution backing EU-wide public country-by-country reporting of taxes paid by large multinational companies. The impetus came from the European Parliament hearings of the European Commission President Ursula von der Leyen, and Vice-Presidents Vestager and Dombrovskis, who have promised that public country-by-country reporting would become reality with respect to taxation. The adopted European Parliament resolution "urgently calls" on the the Member States to finalise the legislative process as soon as possible and prioritise work on the public CbCR proposal on the basis of the Parliament's text.

The CbCR proposal does not introduce significant amendments compared to the compromise reached earlier in the negotiations. Considering that no significant action has been taken since the EU Parliament vote in 2017, the Member States are still assessing the situation.

Progress on public CbCR came to a halt when the Council Legal Service issued its opinion in November 2016. The Opinion concluded that public CbCR was a taxation matter and not a matter falling within the ambit of the Accounting Directive, as was initially found by Commission legal services. The Opinion is based on the premise that the purpose of the proposals is the protection of the functioning of the internal market and prevention of tax avoidance rather that the protection of shareholders and the public interest under Article 50 TFEU. In order for the public CbCR proposals to be characterised a "tax file" by the EU Commission, Member States must unanimously request that the Commission do so, therefore the legal Opinion alone has limited practical consequences without subsequent action. Some Member States continue to challenge the proposed legal basis in the original proposal, suggesting that it relates to taxation matters therefore falls within the ambit of Article 115 TFEU.

The European Parliament appears to be maintaining its steadfast support and went a step further in its initial opinion. The parliamentary Rapporteurs originally proposed the reduction of the 750 million euro threshold to 40 million and extending the scope of the publication of the information beyond that relating to EU countries to every country in which they operate. The question of the legal basis was also assessed. After the vote on the report in a joint committee meeting on 12 June 2017, the amendments were adopted by Plenary on 4 July 2017 (including a compromise on the 750 million euro threshold) and the file was referred back for inter-institutional negotiations.

CFE Tax Advisers Europe will closely monitor developments in relation to this file.

DAC Implementation Update

The DAC6 directive entered into force on 25 June 2018, introducing complex mandatory disclosure rules for intermediaries across the EU. Intermediaries who design and/or promote reportable tax planning schemes will be required to disclose them to their national tax administrations, who will then automatically exchange the information with other Member States through a centralised database.

Members States had until 31 December 2019 to implement the Directive into domestic legislation, and disclosure requirements will apply to intermediaries from 1 July 2020, with all arrangements initiated after 25 June 2018 that fall within the scope of the Directive being reportable.

Luxembourg, The Netherlands and Estonia all published draft legislation in late 2019 concerning the implementation of the EU Mandatory Disclosure Rules Directive (DAC6). All three countries have drafted the implementing legislation broadly in line with the Directive, and have not sought to Gold-plate the Directive. However, the Netherlands and Estonia have sought to provide some guidance on the scope and hallmarks of the Directive.

The maximum penalties that may be imposed vary significantly between the draft legislation of the countries, with a maximum penalty amount of 3,300 Euro in the draft Estonian legislation, 250,000 Euro in the Luxembourgish legislation and 830,000 Euro in the Dutch legislation. Further, the draft Estonian legislation provides for the privilege against self-incrimination to be considered in assessing compliance with reporting obligations, and does not require taxpayers to disclose information about their use of the arrangements. The Luxembourgish legislation, on the other hand, does require taxpayers to disclose the use of the arrangement in their tax returns.

According to the Directive, intermediaries who design and/or promote reportable tax planning schemes will be required to disclose information on reportable cross-border arrangements the first step of which was implemented after 25 June 2018. National tax administrations will then automatically exchange the information with other Member States through a centralised database. Penalties will be imposed on intermediaries who do not comply with the new reporting measures. The initial automatic exchange of information between member states should take place on 31 October 2020.

The European Commission has also published an evaluation document concerning Council Directive 2011/16/EU on Administrative Cooperation, and the five subsequent amendments made to the directive which expanded the scope of the cooperation and exchange of information. The evaluation examines the effectiveness, efficiency, relevance, coherence and EU added-value of the directive.

The evaluation concludes that it is difficult to ascertain whether the directive has been effective or efficient in its aims, given that data is extremely limited concerning monetary benefits derived from having introduced the directive in terms of demonstrated reduced tax evasion. However, the evaluation concludes that the administration cooperation is useful, and that furthermore there is scope to enhance the use of the information exchanged, and means of tracking the value the cooperation produces.

Anti-Money Laundering – New Supranational Risk Assessment

In July, the European Commission adopted four reports concerning the monitoring and implementation of EU anti-money laundering and countering terrorism financing rules. The reports included: a 2019 Supranational Risk Assessment report; a Financial Intelligence Units assessment report; an assessment report of recent money laundering cases involving EU credit institutions; and a report on the interconnection of central bank account registries.

Notably, the updated 2019 Supranational Risk Assessment report categorises the risk of tax advisers and accountants' services being used in money laundering as "significant", and identifies that despite being well organised, there are weaknesses in the manner in which checks are carried out and risk is managed by the profession. The Assessment recommends the Commission carry out transposition checks concerning the AML Directives on Member States, and that Member States ensure obliged entities are compliant with the requirements of the Directives, as well as issue guidance concerning the topics of risk factors involving accountants and how to interpret and apply legal privilege.

The 6th EU AML Directive (legislation in force, but with national law implementation deadline of 3 December 2020), introduces:

- An extended definition of money-laundering offence (aiding and abating),
- predicate offences (such as cybercrime), extension of criminal liability to legal persons
- tougher fines,
- tax crimes related to both direct and indirect taxes as covered by the definition of criminal activity, in line with the revised FATF recommendations. This raises the issue of divergent definitions of tax crimes in national law, which is not subject to EU law harmonisation.

Following on from the Risk Assessment reports adopted in July, the Council of the EU on 5 December also adopted conclusions setting out priorities for the EU's new anti-money laundering framework, seeking to guide the EU Commission in introducing harmonised EU anti-money laundering rules as well as enhanced anti-money laundering supervision across the EU, primarily addressed to the financial sector.

The Council in its recommendations urges Member States to transpose the AML legislation as soon as possible into national law. The conclusions also invite the Commission to explore further possible means of improving AML rules, such as further enhanced cooperation between authorities involved in anti-money laundering. The Council also recommends further harmonizing AML rules by upgrading AML directives into a Regulation (a piece of EU law directly enforceable across all Member states without further need of domestic implementing national laws) and conferring specific AML supervisory tasks to an EU body.

CFE will be following policy developments in this area closely.

Environmental Taxes

The new President of the European Commission Ursula von der Leyen presented an ambitious climate-change related policy proposal, the 'New Green Deal', under which every aspect of the EU economy will be revaluated to address the shortcomings of the European framework, which are compounded by the climate emergency. The European leaders endorsed the policy goal of making Europe a climate-neutral by 2050, with a dissenting opinion from Poland that it could not commit to this goal, as a result of which the EU leaders will revaluate the matter in June 2020. On the taxation policy front, the EU intends to use tax reforms to absorb climate-policy related shocks aiming to facilitate a just transition to a greener economy, specifically by sending the right pricing signals and incentives to producers, users and consumers.

At the informal ECOFIN meeting in Helsinki in September 2019, Ministers discussed the Commission report concerning the Energy Taxation Directive, which notably highlighted that divergent implementation of the Directive and use of tax exemptions by Member States had led to fragmentation within the Single Market. In addition to revision of the Energy Taxation Directive (by qualified majority voting, if necessary), the European Green Deal relies on removing subsidies for fossil fuels and shifting the tax burden from labour to pollution. In order for Member states to be able to rely on targeted VAT rates to reflect the green ambitions, for example to support organic fruit and vegetables, a rapid adoption of Commission's proposal on VAT rates is encouraged.

The State aid guidelines concerning the environmental goals and energy will also be revised by 2021 to facilitate a meaningful transition to climate neutrality by 2050, specifically by phasing out fossil fuels and encouraging clean energy sources.

A proposal for a European carbon border tax is anticipated in the coming months as part of the agenda of EU Commission President Ms von der Leyen. Adding impetus to the Commission actions, on 15 January the European Parliament adopted a resolution concerning the Green Deal, noting the "urgent need for ambitious action to tackle climate change and environmental challenges", and calling for a legally binding "Climate Law" with a domestic and economy-wide legally binding target for becoming a climate-neutral society by 2050, i.e. net-zero emissions by 2050.

EU Tax Policy – Indirect Tax

03

Definitive VAT Regime Progress

On Friday 8 November, EU finance ministers sitting at Council level (ECOFIN) reached agreement on a number of significant indirect tax files, concerning: transmission and exchange of VAT-relevant payment data; amendment of the VAT system as regards the special scheme for small enterprises (SMEs); and the administrative burden for trade in goods subject to excise duty.

The proposals as regards the exchange of VAT-relevant payment data, aimed at reducing VAT fraud, will introduce requirements for records to be kept by payment service providers concerning cross-border payments related to e-commerce. A central electronic system will be established for storage of the information, which will also be accessed and processed by Member States' anti-fraud officials.

The proposals concerning the VAT special schemes for SMEs will revise existing VAT rules for SMEs, to address the fact that SMEs at present face disproportionate VAT compliance costs, which as a result distorts competition on both domestic and EU markets. The compromise text provides for qualifying businesses to be able to use the SME exemption across the EU, subject to annual turnover thresholds, namely a national threshold of €85,000 and an EU threshold of €100,000, coinciding with the European Commission proposals. Ahead of the ECOFIN meeting, the Council services noted that a number of Member states insisted that these thresholds should not be higher, and the Presidency reflected this in the compromise text. The 30 October 2019 COREPER meeting saw some Member states indicating a preference for thresholds of 100 000 and 115 000 EUR, respectively. Issues concerning the amounts of the thresholds were resolved in order for the proposals to be agreed.

Additionally, in November the EU Commission published draft Explanatory Notes on EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods ("2020 Quick Fixes"), which the Commission prepared for input and discussion at the VAT Expert Group.

The explanatory notes set out guidance on Commission's view as to interpretation of Council Directive (EU) No 2018/1910 amending Council Directive 2006/112/EC and Council Implementing Regulation (EU) No 2018/1912 amending Implementing Regulation (EU) No 282/2011 concerning the VAT Quick Fixes. The explanatory notes will not be legally binding on the Member States or the European Commission.

The "Quick Fixes", aimed at rectifying a number of issues in relation to the day-to-day running of the EU VAT system, apply from 1 January 2020. The fixes were designed to address specific issues with EU VAT rules, pending the introduction of a definitive EU VAT Regime, concerning: call-off stock arrangements – simplification and harmonisation of rules regarding call-off stock arrangements, where a vendor transfers stock to a warehouse at the disposal of a known acquirer in another Member State; VAT identification numbers – by the introduction of an identification number for a customer as an additional condition for VAT exemption for intra-EU supplies of goods; chain transactions – simplification and harmonisation of rules regarding chain transactions; and proof of intra-EU supply – introduction of a common framework of criteria of documentary evidence required to claim a VAT exemption for intra-EU supplies.

Discussions between Members States at the EU Council concerning the proposed directive as regards the introduction of the detailed technical measures for the operation of the definitive VAT regime system are ongoing. Discussions are also ongoing in relation to the Commission's proposed Directives on reform of VAT rates, to create a simplified list of products subject to the standard rate, and to allow Member States to have two separate reduced rates, one reduced rate and one exemption. The above proposals will remain a focus of the Indirect Taxes Subcommittee of CFE.

EU Policy – Blacklist & Code of Conduct

04

Tax Good Governance Standards: EU Blacklist & Code of Conduct Group

The EU's list of non-cooperative jurisdictions for taxation purposes was updated in October and November 2019. In October, the Council of the EU endorsed removal from the EU black and/ or greylist of a number of jurisdictions, including the United Arab Emirates, Albania, Costa Rica, Serbia, Switzerland, Mauritius and the Marshal Islands, establishing that those countries have implemented reforms to comply with EU tax good governance standards.

Additionally, in October the EU's Code of Conduct Group (Business Taxation) concluded on 24 October 2019 that North Macedonia has fulfilled the tax good governance criteria set out by the EU and as a result would be removed entirely from the Annex II jurisdictions. The General Secretariat of the Council of the EU recommended delisting in a note to the EU Member states for ECOFIN Council, which was approved on 8 November. The Council also endorsed the removal of Belize from the blacklist to the grey list, after establishing that it had implemented reforms to comply with EU tax good governance standards. It will be removed from the Annex II grey list in the future, subject to implementation of further changes concerning its foreign source income exemption regime.

Eight jurisdictions now remain on the EU blacklist: American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

In November, the Council of the EU also adopted a report of the Code of Conduct Group (Business Taxation), which sets out a detailed 6-monthly progress report on achievements of the Code of Conduct Group, and the status of jurisdictions that have been examined under the list.

Notably, the report details that the Code of Conduct Group reached agreement at its meeting on 14 November concerning guidance for Members States on defensive measures that can be taken in the tax field concerning non-cooperative jurisdictions.

The guidance sets out co-ordinated actions for Members States to take of a legislative nature, to encourage compliance with the Code of Conduct screening criteria as well as other international standards. Member States are recommended to apply at least one of the measures, which include non-deductibility of costs, CFC rules, withholding tax measures and denial of participation exemption on profit distribution.

Monitoring the work of the Code of Conduct Group and changes to the EU list of non-cooperative jurisdictions for tax purposes will remain an ongoing priority for CFE Tax Advisers Europe.

International Policy – OECD, IMF & UN

05

OECD Update

Signatories to OECD's MLI Tax Treaty & Inclusive Framework Continue to Increase

The second half of 2019 saw Bosnia and Herzegovina, Kenya, Oman as well as Jordan become signatories to the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The jurisdictions of Canada, Denmark, Iceland, Latvia, Liechtenstein, Mauritius, Norway, Qatar, Switzerland and Ukraine have also all deposited instruments of ratification concerning the convention. 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.

Further jurisdictions also joined the OECD's BEPS Inclusive Framework, with Albania, Bosnia and Herzegovina, Eswatini, Gibraltar, Honduras, Jordan, Montenegro, Namibia all joining in the second half of 2019. Members of the Inclusive Framework have the opportunity to work together on an equal footing with other OECD and G20 countries on implementing the BEPS package consistently and on developing further standards to address remaining BEPS issues. There are now 137 jurisdictions that are participating in the project.

In addition, Benin, Bosnia and Herzgovina, Cabo Verde, Guinea, Honduras, Mongolia, Namibia and Oman all joined the Global Forum on Transparency and Exchange of Information for Tax Purposes in the second half of 2019.

Significant Progress on CbCR

The OECD has observed significant progress in the implementation of the minimum standard on Country-by-Country Reporting (CbC), providing tax administrations with an unprecedented level of information and transparency on activities of multinational companies (MNCs). These conclusions are contained in the outcomes reported in September concerning the second phase of peer reviews of the BEPS Action 13 Country-by-Country reporting initiative, demonstrating strong progress in the efforts to improve the taxation of multinational companies worldwide. CbC reporting as a minimum standard of the BEPS project requires tax authorities to collect and share detailed information on MNCs operating within their jurisdiction, collection data on revenues, profits, taxes paid and accrued, as well as the capital, accumulated earnings, number of employees and tangible assets, broken down by jurisdiction.

As a follow-up of BEPS Action 13, the OECD /G20 Inclusive Framework on BEPS also released updated guidance on the implementation and operation of Country-by-Country Reporting (CbCR). The new guidance includes the treatment of dividends, the operation of local filing, the use of rounded amounts in Table 1 of an MNE Group's CbC report and the information that must be provided with respect to the sources of data used.

Mandatory Disclosure Rules on CRS Avoidance Arrangements

In late June 2019, the OECD released the International Exchange Framework for Mandatory Disclosure Rules on CRS Avoidance Arrangements and Opaque Offshore Structures. The publication sets out an international framework to govern MDR exchanges, from a legal and an operational perspective.

The publication also contains a draft of the Multilateral Competent Authority Agreement (MCAA), which will enable jurisdictions that receive information about a CRS Avoidance Arrangement or Opaque Offshore Structure under the MDRs to exchange such information with the relevant jurisdictions where the concerned taxpayers are residents.

MAP Peer Reviews under Action 14 of BEPS

In the second half of 2019, the OECD invited public input on taxpayer questionnaires undertaen as part of the peer review process under Action 14 of the BEPS Action Plan concerning taxation dispute resolution and the Mutual Agreement Procedure (MAP), aimed at making dispute resolution mechanisms more effective.

In August, the OECD also published the first set of Stage 2 Mutual Agreement Procedure Monitoring Peer Reviews for the jurisdictions of Belgium, Canada, the Netherlands, Switzerland, the United Kingdom and the United States. The stage 2 peer reviews examine the progress of jurisdictions in implementing recommendations set out in their stage 1 peer review reports.

The reports demonstrate that positive steps had been taken by all six jurisdictions, with most jurisdictions updating MAP guidance and allocating more resources to the competent authorities to increase efficiency in handling MAP cases. Additionally, each jurisdiction had either maintained or decreased the timeframe within which MAP cases were resolved, and the majority of jurisdictions were also using the MLI to ensure treaties were in line with the standard.

Forum on Harmful Tax Practices

In July, the OECD released a report, approved by the Inclusive Framework on BEPS, as part of implementation of Action 5 of the OECD/G20 Base Erosion and Profit Shifting Project, concerning assessments undertaken by the Forum on Harmful Tax Practices (FHTP) of 56 preferential tax regimes.

The Forum on Harmful Tax Practices has reviewed 287 regimes since the commencement of the BEPS Project. The Forum will continue its review of the regimes and in 2020 will begin reviewing the implementation of recommendations.

Platform for Collaboration on Tax

The Platform for Collaboration on Tax, a joint initiative of the IMF, OECD, UN and World Bank Group, issued a draft toolkit in October 2019 designed to help developing countries in the implementation of effective transfer pricing documentation requirements. Input on the draft toolkit was due by 8 November 2019. The Global Tax Advisers Platform, of which CFE Tax Advisers Europe is a founding member, was pleased to submit a response.

The consultation sought specific input concerning: whether the draft toolkit addresses all the relevant considerations for the design of an effective transfer pricing documentation regulatory system; whether particular approaches (e.g. penalties or compliance incentives) are especially beneficial for limited capacity developing countries, in terms of enforcement of transfer pricing documentation; whether there other transfer pricing documentation requirements not covered in this toolkit that should be considered; and what additional considerations and/or tools can be included to assist developing countries to implement effective transfer pricing documentation.

GTAP welcomed the draft toolkit, and set out its view that the toolkit has significant potential impact in terms of developing uniformity in practice across jurisdictions. GTAP's responses to the consultation questions were based on responses compiled by fellow founding GTAP member, the West African Union of Tax Institutes and its member organisation, the Chartered Institute of Taxation of Nigeria (CITN).

UN Tax Committee Publishes Updated Model Double Taxation Convention

The United Nations published an updated version of the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries in the second half of 2019. The manual was updated during the 15th Session of the UN Committee of Experts on International Cooperation in Tax Matters, which was held in October 2017 in Geneva, to take into account changes made to the UN Model Convention and developments in the OECD BEPS project.

A revised draft version of the manual was presented in October 2018, and adopted by the Committee in New York in April 2019. The experts in attendance at that meeting included representatives of CFE Tax Advisers Europe, who also discussed the report of the subcommittee on updating the United Nations Model Double Taxation Convention, including: taxation of royalties; taxation of collective investment vehicles; tax and the Sustainable Development Goals; environmental tax issues and lastly, the tax consequences of the digitalising economy, with particular focus on issues of relevance for developing countries.

The 19th Session of the UN Committee of Experts on International Cooperation in Tax Matters held in Geneva on 15- 18 October saw a debate on the relevance of taxation policy for the attainment of Sustainable Development Goals (SDGs), among other topics. Other agenda items included the tax challenges of the digitalisation of the economy, update of the UN Nations Model Double Taxation Convention between Developed and Developing Countries, production of a UN Handbook on Tax Dispute Avoidance and Resolution as well as an update of the UN Transfer Pricing Manual.

Case Law & EU State Aid Update

06

Apple Has Its Day in Court in Selective Advantage Case...

Apple's €14 billion Euro appeal against the EU Commission's 2016 decision that Ireland's tax authorities granted Apple a "selective advantage" in contravention of EU State aid law proceeded to hearing before the EU's General Court in September 2019.

The Commission issued its preliminary decision in August 2016 after a three-year long investigation into Apple's tax arrangements in Ireland. The Commission found Ireland granted a selective advantage to Apple as it did not employ appropriate profit allocation methods to calculate the Irish source income of the Irish Apple branches. Apple in its appeal documents claims that there is no legal requirement that profit allocation is compliant with the arm's length principle and that it is furthermore not an applicable standard of assessment under European law. Apple and Ireland also argue that the Commission fundamentally erred in failing to recognise that profit creating activities, including development of IP, are attributable to the United States, rather than Ireland.

Apple's lawyers argued that the fact that Apple's products and services were developed in the United States exposed flaws in the primary line of the Commission's arguments which defied logic, saying the two branches simply could not be responsible for generating all of Apple's profits outside the US. Lawyers for the Commission argued that Ireland had not carried out any assessment of the subsidiaries' activities, risks or assets, arguing that accepting the arbitrary method of calculating profits suggested by Apple without carrying out any assessment in itself gave rise to a presumption of advantageous treatment.

The General Court's decision is expected in the coming months, no doubt to be followed by an onward appeal by the losing party to the Court of Justice for final determination. The outcome of the appeal will be significant in testing the Commission's analysis of the arm's length principle as applied in other ongoing cases, including Starbucks and Amazon.

EU General Court Delivers Fiscal State Aid Judgments & Commission Decides Not to Appeal *Starbucks* Loss ...

In September, the General Court of the EU delivered the long-anticipated first instance judgments in the fiscal State aid cases of Starbucks and Fiat. In the case *Netherlands v Commission* (Starbucks), the Court annulled the Commission decision, which had originally established that the Netherlands had awarded State aid to Starbucks by way of selective fiscal benefits. In *Luxembourg v Commission* (Fiat), the Court dismissed the action for annulment and upheld the Commission decision establishing State aid to Fiat Finance and Trade (now Fiat Chrysler Finance Europe).

However, the Court confirmed Commission's competence to scrutinise individual tax rulings (including transfer-pricing rulings, Advance Pricing Agreements - APAs) that national tax administrations conclude with taxpayers. The judgments further indicate that the General Court accepts Commission's interpretation of the 'arm's length' principle as a 'yardstick' for assessment of the EU law compliance of individual tax rulings with Article 107(1) of the Treaty. The Court also set limits to the Commission's powers in the review of national fiscal State aid measures, by stating that at this stage of development of EU law, the Commission does not have 'autonomous competence' to define 'normal taxation of a company', outside the scope of national taxation rules of each Members state.

In November, the European Commission confirmed it had decided not to appeal the judgment of the General Court in the fiscal State aid case *Netherlands v Commission (Starbucks)*. A spokesperson for the European Commission stated: "After carefully assessing the General Court judgment of 24 September 2019 concerning the tax treatment of Starbucks in the Netherlands, the Commission has decided not to appeal the Court's ruling to the European Court of Justice," confirming comments by Commission Vice-President Vestager given in an interview.

UK Seeks Annulment of European Commission Decision in CFC Cases

In August, an application filed by the United Kingdom with the Court of Justice of the European Union seeking that the decision of the European Commission in the CFC cases be annulled was published in the Official Journal of the European Union.

In April, the European Commission concluded an investigation into the compliance of the UK's Controlled Foreign Company (CFC) legislation with EU State aid rules, declaring that the application of the Group Financing Exemption contained in the Finance Act 2012 partly constituted unlawful State aid to certain multinational companies. Between 2013 and end-2018, the UK CFC rules included a Group Financing Exemption that allowed multinational companies to benefit from a full or partial exemption on interest payments from loans, i.e. on payments related to certain financing income. According to the European Commission, the exemption is compliant with the State aid rules where the financing income is derived from non-UK activities. Conversely, the Group Financing Exemption on financing income derived from UK activities was considered to be in breach of the State aid rules. As a consequence, the Commission concluded that beneficiaries of the measure received an undue advantage over UK competitors who were not able to rely on the exemption and were subject to the headline corporate tax rate.

The UK in its application relies on four pleas in law: that the Commission made a manifest error in its assessment by identifying the wrong system for an examination of comparability; that the Commission made a manifest error in determining that the exemptions are a derogation; that the Commission made a manifest error in its assessment regarding selectivity; and that the Commission erred in determining that the UK CFC rules granted a benefit which would give an unfair advantage and thus affect intra-EU trade. The UK is seeking an order from the Court of Justice annulling the decision with costs.

Commission Announces In-Depth Investigation into Belgian Excess Profit Exemption Cases

Appeal documents concerning the decision of the General Court to annul the Commission's decision in the Belgian 'excess profit" State aid cases were published in the second semester of 2019, which detail the Commission's appeal against the General Court's judgment which annulled the Commission's decision in the cases. The Commission argues that the Court incorrectly classified the "excess profit" tax ruling practice as a scheme under Article 1(d) of Regulation 2015/1589, and misinterpreted the first, second and third condition of Article 1(d) in its decision. The European Commission also announced in September it had launched in-depth to determine whether Belgian "excess profit" tax exemptions granted to 39 multinational companies amounted to illegal State aid.

These investigations concern a decision originally taken by Commission in 2016 that a so-called Belgian "excess profit" tax scheme had allowed multiple European MNEs in Belgium to benefit from a corporate tax base reduction for the generated excess profits. Commission's State aid investigation found that Belgium had established an “aid scheme”, derogating from Belgian tax law and the “arm's length principle” as interpreted by the European Commission. The "excess profit" scheme was marketed by the Belgian government under the strapline "Only in Belgium".

The alleged error in law brought up by the Belgian government and the beneficiaries amounted to competence issues and methodology-related arguments. Belgium challenged European Commission competence to assess the State aid compliance of administrative measures in the direct tax area (tax rulings), invoking national sovereignty prerogative and methodological arguments related to the assessment of the alleged aid as an “aid scheme”. The General Court dismissed the first plea, reaffirming Commission’s competence to assess the State aid compliance of national direct tax measures, including administrative decisions such as tax rulings. The Court noted that while direct taxation, as EU law currently stands, falls within the competence of the Member States, they must nonetheless exercise that competence consistently with EU law, in particular primary EU law (fundamental freedoms and State aid rules). Accepting the second plea, the Court disagreed with the Commission’s assessment that the tax rulings constituted an “aid scheme”. Significantly, the Belgian tax authorities had influence over the essential elements of the tax rulings system, which precludes the existence of an aid scheme. Further, it was established that the Procedural Regulation (EU/2015/1589) defines aid beneficiaries “in a general and abstract manner” for an infinite period of time, which was not the case with the Belgian “excess profit” rulings.

The decision in the Belgian excess profit rulings cases (Cases T-131/16 and T-263/16 Kingdom of Belgium v European Commission) was a highly anticipated decision considering that the Court for the first time had an opportunity to interpret the Commission’s understanding of the arm’s length principle under EU State aid law and the competence of the Commission to assess individual tax rulings. The decision did not invalidate Commission’s substantive interpretation of the State aid rules, but challenged the methodology of assessment and the classification of the aid as a “scheme”.

As the General Court did not rule on whether the exemptions gave rise to illegal State aid, the Commission launched investigations into each of the companies on the basis that the compatibility of the rulings must be assessed against EU State aid rules.

The outcome of the appeal is eagerly anticipated.

EU Tax Policy Report

June – December 2019

CFE Articles

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The "Torino-Busan Declaration": Identifying Priorities in an International Setting for Tax Professionals and Taxpayers

Just over a year after the "Ulaanbaatar Declaration", the Global Tax Advisers Platform (GTAP) identified four key short-term tax priorities in the "Turin-Busan Declaration", signed on 3 and 17 October 2019 in Torino and Busan, respectively. The main objective is to set out a framework to strengthen cooperation among the globalizing community of tax professionals and to ensure fair and efficient taxation in an increasingly global, dynamic and digitalized context.

1. Introduction

The Global Tax Advisers Platform (GTAP), an international forum, is the most representative body of the tax profession globally, presently representing over 600,000 consultants active in Europe, Asia, Australia-Oceania and Africa. Its aim is to bring together national and international organizations of tax professionals.[1] The GTAP, in particular, strives to bring to stakeholders' attention the relevance of streamlined tax system operations, both internationally and nationally, in order to guarantee equitable and fair taxation for the benefit of citizens, governments, taxpayers and their advisers. Equally, the GTAP's *leitmotif* is to promote the relevance of taxpayer charters and the protection of taxpayer rights for the benefit of the tax profession at large.[2]

In 2018, the GTAP promoted the "Ulaanbaatar Declaration", signed on 12 September 2018.[3] Its main goals were to establish 10 fundamental objectives for a fair and efficient global tax framework and promote the joint effort of the globalizing tax community internationally, for example, under the umbrella of the UN, OECD and the European Union.[4]

Building on the success of the initial manifesto, 2019 saw the publication of the "Torino-Busan Declaration" (signed on 3 October 2019 in Torino and on 17 October in Busan), setting out four additional priorities regarding international taxation.[5] As a result of the joint efforts of the founding bodies and observers of the GTAP, an inaugural global tax conference, entitled "Tax and the Future", was held in Torino, Italy on 3 October 2019 on the occasion of the 60th Anniversary of the leading body of European tax professionals, CFE Tax Advisers Europe. This event, in conjunction with the GTAP, was held under the patronage of the President of the European Parliament, David Sassoli and in the presence of the Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans and the Head of the European Commission's Company Taxation Initiatives, Bert Zuijdendorp.

The following article endeavours to examine the proclaimed priorities of the "Torino-Busan Declaration".

2. Tax for Growth

One of the main objectives of the GTAP is proactive engagement of the global tax professional community in the creation of a global fiscal framework that encourages stable economic growth. In spite of its *status nascendi*, the GTAP is gaining increasing visibility and prominence. The key activities of the platform are increasingly geared toward promotion of sustainable fiscal policies that would ultimately improve society for the benefit of the many.

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1. The founding members of the GTAP are the CFE Tax Advisers Europe; the Asia-Oceania Tax Consultants' Association (AOTCA); and the West Africa Union of Tax Institutes (WAUTI). Observers to the GTAP include: the International Association of Financial Executives Institutes (IAFEI); the Society of Trust and Estate Practitioners (STEP); the Arc Méditerranéen des Auditeurs (AMA); and the Center for Criminal Tax Law (*Centro di Diritto Penale Tributario*, CDPT).
2. In the 21st century, collaboration in the tax sector is essential considering the growth rate of both globalization and digitalization. In this regard, numerous initiatives have been undertaken by international organizations, primarily the OECD and the European Union.
   The current international context is characterized by:
   – international and supranational legislators, as well as European and OECD institutions;
   – transnational taxpayers, or entities that structure their activities without borders; and
   – national tax authorities that cooperate internationally.
3. *See* P. Valente, *The Ulaanbaatar Declaration: 10 Key Priorities in International Taxation Identified by the Global Tax Advisers' Platform (GTAP)*, 59 Eur. Taxn. 1, p. 33 (2019), Journal Articles & Papers IBFD.
4. 1. Strong cooperation among tax professionals; 2. Inclusiveness, openness, global reach; 3. Position of tax professionals in the tax scenario; 4. Impact on the renovation of the international tax scenario; 5. Proposal of a new tax system; 6. Taxpayer rights; 7. Awareness and foresight; 8. Preparation for the digital era; 9. Tax advisers without borders (TAWB); 10. Tax culture and ongoing education. *See* id., at p. 33.
5. In 2018, the GTAP encouraged dialogue and cooperation between tax consultants due to the need to adapt to the new challenges proposed at the global level resulting from the progressive affirmation of new technologies. According to the GTAP, tax consultants in all jurisdictions share common interests that can be pursued more effectively through greater interaction between its members.

The well-being and progress of the global community is achieved through continuous development at a sustainable rate. In this context, taxation policies are undoubtedly a key factor influencing economic growth. The distribution of the tax burden has been shown to encourage or discourage economic development. Furthermore, fiscal policy is the key instrument to guarantee development (from policies aimed at promoting equality to sustainable environmental protection).

Moreover, new trends in international taxation affect both developing countries and the rate of economic growth. To that end, the GTAP is resolutely committed to promoting inclusive tax policies that foster growth.[6] By extension, a key element of economic growth is tax governance.[7] To improve tax governance, GTAP members support policies aimed at strengthening fiscal certainty[8] and voluntary compliance by taxpayers concerning their tax obligations.

On a related note, the GTAP has endorsed the findings of the OECD Report that fiscal certainty has a significant impact on business decisions, in the absence of which modified business structures, increased costs, and changes to investment decisions could arise.[9] The GTAP has always advocated for increased tax certainty and strengthened taxpayer rights as a proxy for increased tax morale among individuals and businesses. Tax morale is defined as a voluntary, intrinsic motivation to pay taxes, both at the level of individuals and businesses. GTAP members strongly believe that well-functioning institutions, trust in governments and an atmosphere of positive returns from the system back to citizens will produce results, such as higher tax morale and a willingness of individuals to voluntary contribute to the "social contract" by paying more taxes. Thus, a sustainable system that creates growth should be based on a fair tax environment, responsive governments, reciprocally related to the tax contributions of citizens and the supply of public goods.

To the extent that taxpayers perceive that their "social contract" commitments are adequately represented, their identification with national governments increases. Consequently, their willingness to voluntarily meet the needs of the budget and pay taxes significantly affects growth. The GTAP concurs with the proposition that effective public services are a means to demonstrate how well governments turn tax revenues into beneficial expenditures, so these can produce a double dividend comprising both the intrinsic benefit of the service provided and spillover benefits from public satisfaction generated by its provision.[10]

Furthermore, GTAP members believe that an increased focus on voluntary tax compliance has a profound impact on economic growth, which is particularly relevant for developing countries: improved public service delivery is directly related to an improved tax morale. On this basis, the GTAP highlights the intrinsic link between sustainable economic growth, societal development and voluntary compliance, as citizens and businesses alike will more likely comply with the law if the taxpayer/government relationship is found to be equitable.[11]

In a recent publication,[12] the OECD indicated that achieving sustainable growth requires increased focus on the following areas: labour, investment and productivity. Concerning the workforce, the OECD has reported that labour income tax reforms will generally differ depending on whether the objective is to increase participation or working hours. Reducing average labour taxes may be desirable to increase participation, while lowering marginal tax rates may be preferable to increase working hours. There could also be gains from reducing the progressiveness of the tax programme on the income of individuals, both in terms of quantity and quality of the job offer. Estimates in this study indicate the negative effects of highly progressive income tax programmes on per capita GDP through both less labour use and lower productivity.

Regarding investments, the OECD believes that a reduction in corporate tax rates and the elimination of special tax breaks can encourage investment. Similarly, providing greater certainty and predictability in the application of corporate income taxes can improve development performance. On the issue of productivity, the OECD has identified several ways in which taxation can influence growth. A widely-used policy trajectory to improve productivity is to stimulate the private sector's innovative activity by offering tax incentives for increased expenditure on research and development (R&D). Moreover, the OECD

6. The Declaration states: "We share the commitment to improving tax morale as a policy course of action with the most meaningful impact on capacity building and economic growth".
7. Tax governance in business groups is the answer to the fundamental need to manage and prevent risks related to the tax variable, as well as ensure support in respect of tax audits. Corporate governance and tax governance are closely interrelated. In this sense, tax governance can be defined as corporate governance applied to the tax variable. Tax governance represents a "constituent part" of the broader concept of corporate governance. Seen from another perspective, fiscal governance summarizes the response of a company's Board of Directors to the following questions:
1) What responsibilities and opportunities does the company face in tax terms?
2) Which response to the above responsibilities and opportunities "best interprets" the interests of the shareholders and other parties involved?
8. Legal certainty, a principle universally recognized by the states, implies a uniform and certain interpretation of tax legislation. In carrying out an economic activity, the taxpayer must be able to know with certainty and be clear on the tax obligations imposed by national legislation. Tools, such as rulings and circulars or resolutions (technical interpretations) aim to provide an univocal interpretation between tax offices, during the audit procedure. According to art. 12 Model Taxpayer Charter (*see* http://www.taxpayercharter.com/index.asp (accessed 23 Jan. 2020), the tax administration has the duty to communicate both the various interpretations of the tax legislation, and the positions taken on a given question: these interpretations must be published and made available to the taxpayer.
9. OECD, *Tax Morale: What Drives People and Businesses to Pay Tax?* (OECD 2019).
10. J. Alm & B. Torgler, *Culture differences and tax morale in the United States and in Europe*, 27 Journal of Economic Psychology 2, pp. 224-246 (2006).
11. B. Torgler, *Tax morale, rule-governed behaviour and trust*, 14 Constitutional Political Economy 2, pp. 119-140 (2003). Torgler suggest that there are other possibilities to increase tax morale, i.e. taxpayers are likely to follow rules they know or trust to produce good results or when they trust both the public officials and the legal system.
12. OECD, *Tax and Economic Growth* (OECD 2019), available at https://www.oecd.org/mena/competitiveness/41997578.pdf.

findings indicate that tax incentives have a stronger effect on R&D spending in comparison to direct funding.

A careful balance of tax policy choices from both a company taxation and personal income taxation perspective can provide the equilibrium necessary to create an attractive investment climate, resulting in stable and predictable tax systems that are managed in an efficient and transparent manner, yet are based on the principles of fairness and equitability.

3. Tax and Climate Change – Sustainable Tax Policies

Climate change affects us all. GTAP members are committed to sharing their knowledge and expertise in tax matters with governments and other international stakeholders with the aim of reducing carbon emissions in all sectors of the economy. To that end, fiscal policy should serve as a tool to facilitate the transition to a low-carbon economy for future generations. Future-proof tax systems need a balance between today's public finance needs and tomorrow's sustainable policies.

In this context, the Sustainable Development Agenda, published by the OECD, is particularly relevant.[13] This document, published in 2015, discusses a series of "goals" of significant relevance for the future of our planet. It emphasizes radical changes caused by the alarming increase in carbon emissions on a planetary scale. In this regard, it is necessary to recall how taxation, seen as a system of incentives and disincentives, can contribute profoundly to directing companies, governments and individuals towards the pursuit of goals that would otherwise be very challenging to reach, such as a reduction in carbon emissions.

The close relationship between fiscal policy and sustainability has been explored in the past in several publications,[14] which have highlighted the need to discourage emissions as a preventive method with respect to the drastic environmental consequences caused by the increase in temperatures.

Estimates of leading international organizations, such as the International Monetary Fund (IMF), the Organisation for Economic Co-operation and Development (OECD), the United Nations (UN) and the World Bank agree that a failure to face the most significant environmental challenges could potentially slow down the development of the world economy and push more than 100 million people into extreme poverty.[15]

In a context of great political and social instability, globalization has contributed to creating the conditions for a chaotic process of restoring equilibrium on a global scale. Considering the evident slowness demonstrated by most companies to adapt to the inevitable changes imposed by an increasingly interconnected world, it is reasonable to hypothesize that the consequences of further environmental instability may constitute a point of no return even from a social and cultural perspective.

The tax professionals united under the umbrella of the GTAP welcome the commitments of the new European Commission led by President von der Leyen to align the future direction of tax policy with Europe's climate ambitions by using a variety of policy instruments, including the State aid and competition law tools, which could support an equitable transition to a greener economy. The New European Green deal presents a unique opportunity to make Europe the first climate-neutral continent, under which every aspect of the economy ought to be revaluated to address the shortcomings of the global framework, which are compounded by the climate emergency.

To that end, the GTAP welcomes the tax policy tools of the New Green Deal aimed at removing subsidies for fossil fuels and shifting the tax burden from labour to pollution. Targeted VAT rates to reflect such ambitions should also be considered to encourage environmentally friendly policies, by adopting the Commission's proposal on VAT rates by EU Member States as a matter of priority. In this endeavour, the GTAP members stand ready to support policymakers across the globe to make such progressive climate change-related policies a reality for the benefit of generations to come.

4. Tax and Digitalization

The digital economy is characterized by an unparalleled dependence on intangible assets, massive use of data, widespread adoption of multilateral business models that capture value from externalities generated by free products, and by a difficulty in determining the jurisdiction in which value creation occurs. Despite the rapid growth of the digital sector, the methods of conducting business internationally have been revised; this requires a similar renewal of taxes and other regulations governing these companies.

The OECD admitted, for the first time, at its Ottawa Conference (1998),[16] that there was a need to address digital sector taxation but decided that the existing rules applicable to traditional companies were sufficient to manage even their digital counterparts. More than two decade later, however, the communication revolution is at its peak and new business models are being developed every day. The OECD has noted that national tax laws have not kept pace with the globalization of corporations and companies within the digital economy.

13. United Nations, *The Sustainable Development Agenda*, available at https://www.un.org/sustainabledevelopment/development-agenda/ (accessed 30 Oct. 2019).
14. A. Valente & M. Nicoli, *Taxation as a Pivotal Element for Sustainable Development Goals*, in *CFE Tax Advisers Europe 60th Anniversary – Liber Amicorum* ch. 19 (IBFD 2019), Books Online.
15. International Monetary Fund, OECD, United Nations (UN) and World Bank Group, *Enhancing the Effectiveness of External Support in Building Tax Capacity in Developing Countries*, Prepared Submission to G20 Finance Ministers (International Monetary Fund 2016), available at https://www.oecd.org/tax/enhancing-the-effectiveness-of-external-support-in-building-tax-capacity-in-developing-countries.pdf.
16. OECD, *A Borderless World: Realising the Potential of Global Electronic Commerce* (OECD 1998), available at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=sg/ec(98)14/final&doclanguage=en (accessed 30 Oct. 2019).

This has allowed multinationals to capitalize on those gaps that exist in national systems to artificially reduce the amount of taxation. This has led to the creation of an action plan to tackle the tax challenges of the digital economy within the OECD Base Erosion and Profit Shifting (BEPS) Project. The initiatives of the OECD and the European Union in relation to the digital economy are aimed at adopting measures to fight aggressive tax planning and tax base erosion techniques, which are facilitated by the dematerialization that distinguishes digital companies.[17]

With weaker entry barriers and ease of access to a global customer base, through the widespread use of the Internet, a variety of small and medium-sized enterprises (SMEs) have established their presence as digital service providers in the form of electronic applications, online databases, online markets, multilateral platforms (which allow for customer-to-customer transactions), and cloud-based storage. Some of these companies operate on completely virtual platforms to serve customers globally and do not require a physical presence in any jurisdiction (for example, online databases), thus escaping taxation in most jurisdictions.[18]

Growth is currently defined by considering the various developments in the digital sector. Digital technologies have become an integral part of business and everyday life and their impact is expected to evolve over time. Digitalization produces its effects in the fields of technology, transport, education and health care. The creation of tax rules that can be shared by national legislators around the world is essential to fostering a digitalization process that is of service to mankind.

In the fiscal sector, digitalization exacerbates the disconnect between the place where value is created and where taxes are paid, which then influences the perception of fairness in tax systems, beyond borders and nations. Therefore, these important issues deserve a global response. At the same time, the new "single global tax jurisdiction" requires rules that find broad consensus.

Due to the rapid change in today's environment and the challenges posed by the digitalization process, current solutions must be "future-proof" and consistent with the principle that profits must be subject to taxation in the place of actual creation of value. The GTAP thus calls for a coordinated response of international fiscal policy to the challenges posed by digitalization.

GTAP members are very much aware of the historic significance of attempting to recognize new taxation rights for jurisdictions as a result of the digitalization of the economy, in particular given that, under present rules, no income can be attributed to any nexus not based on physical presence. If the OECD project on addressing the taxation challenges of the digitalizing economy proves successful, it will represent a new era in the development of global tax policy and the principles it lays down will be used in fashioning future fiscal rules, the need for which is currently unknown. It will become a major precedent. Considering these circumstances, and in order to make meaningful progress in due course, the GTAP has called for more clarity and early consensus at a political level as to the outcome of this process, recognizing the consequences of departing from well-established principles of international tax law in a move towards a more complex international tax system that partly introduces formulary apportionment.

To this end, the GTAP believes that more time should be allowed in order to arrive at workable solutions that will withstand scrutiny and the tests of time. A comprehensive solution should be able to keep pace with the ever-evolving nature of digitalizing business models, resolve the present taxation challenges, while ensuring the sustainability of the process, which will justify the resources expended by taxpayers, their advisers and tax administrations in making the new rules a reality. This is particularly relevant for developing countries.

5. Taxpayer Rights and Certainty in a Fast-Paced World

Sustainable growth is dependent on effective tax compliance. Voluntary compliance by taxpayers guarantees greater resources, which are necessary for the implementation of the social contract between citizens and governments. When taxpayer rights are not sufficiently guaranteed, tax compliance is compromised. A tax framework that is unable to adequately address the current evolving reality leads to uncertainty at the expense of economic growth. Consequently, under a dynamic global economic framework, taxpayer rights should act as a "beacon" of certainty.

The GTAP underlines the fundamental importance of taxpayer rights to good tax governance and, to this end, its members urge governments and international bodies to promote the "fundamental right of tax certainty". This right is appreciated in the Model Taxpayer Charter, an initiative undertaken by CFE Tax Advisers Europe, AOTCA and STEP.

Any discussion of the nature of taxpayer rights and responsibilities can start from a range of perspectives, but must first and foremost consider property rights. Article 17 of the Universal Declaration of Human Rights provides as follows:[19]

> 1. Everyone has the right to own property alone and in association with others;
>
> 2. No one may be arbitrarily deprived of all his properties.

In general, the following guiding principles should form the basis of any debate aimed at protecting taxpayer rights:[20]

(1) the fundamental civil liberty of any citizen to keep, for his own use and enjoyment, the product of his

17. S. Huibregtse, *Digital Economy Handbook* (e-bright 2019).
18. Id.
19. M. Cadesky, I. Hayes, & D. Russell, *Towards Greater Fairness in Taxation, A Model Taxpayer Charter* p. 95 (IBFD 2016).
20. Id.

work and of his industry, subject only to the obligations that the law imposes (for example, taxation);

(2) the role of the tax consultant to provide the appropriate tools to customers in order to exercise the choices granted to them by the tax law and to help them comply;

(3) the role of a tax administration to collect the tax provided for by the law, nothing more, nor less; and

(4) all parties within the tax system must fully recognize and respect the role of others, starting from a conceptual basis of a philosophical nature that is of a pragmatic nature.

The first principle is based on the willingness of governments to promote and protect human rights.

The second acknowledges that, once accepted, the legitimate sovereign right of any nation to choose its own tax system, will have immediate consequences.

Regardless of the starting point, the same result tends to be achieved. Taxpayer rights must necessarily be recognized under any modern tax system.[21]

Finally, the overriding purpose of a Taxpayers' Charter is to foster a relationship of mutual trust, respect and responsibility between taxpayers and their tax administration by clarifying taxpayer obligations, while also upholding the rights of taxpayers. The Charter aims to ensure that all taxpayers are treated equally and without bias or preference, which will benefit the economy as a whole.

6. Conclusion

The "Torino-Busan Declaration" highlights four key priorities that are of relevance in the present tax arena. As such, it confirms the importance of taxation as a powerful tool to encourage (i) the growth of national economies, (ii) the pursuit of sustainable development and (iii) the acknowledgement of digitalization as a process that presents immense opportunities, but equally could be disruptive to the existing behavioural models at both an individual and organizational level. Fostering taxpayer rights in such a new and dynamic context can only prove to be beneficial. The GTAP will be instrumental in this process.

21. Art. 5 Model Taxpayer Charter indicates some principles present in the national legislation of most countries:
    - the presumption of honesty and "truthfulness" of taxpayer behaviour, unless there is evidence of the contrary;
    - the prohibition of abuse of rights, in the sense that a taxpayer must not use a statute for the purpose of hindering or delaying the actions of the tax administration in the execution of national fiscal provisions;
    - a requirement that taxpayers act within the limits imposed by the national tax legislation;
    - ignorance of tax legislation does not justify the non-application of the tax or non-payment of the tax due or non-application of the penalties;
    - the principle of non-discrimination in the application of tax;
    - recognition of an exemption from the application of interest and sanctions (in specific cases, in particular when the taxpayer proves to have operated in good faith); and
    - tax legislation should not penalize a particular industrial sector or a certain employment sector without just cause.

Summaries of Technical Conferences

David Russell, Euney Marie Mata-Perez, Piergiorgio Valente, Gladys Olajumoke Simplice, Gabriele Fontanesi, Federico Broglia, Mario Garavoglia

The Inaugural Global Tax Advisers Platform Conference

In 2019, the Global Tax Advisers Platform held its first Global Conference, in Torino, Italy, on Thursday 3 October 2019 on the topic of "Tax and the Future". The conference reflected the conviction that tax advisers of all jurisdictions have common interests; and that these interests can be pursued more effectively together.

Piergiorgio Valente, President of CFE Tax Advisers Europe, welcomed speakers and attendees to the Conference, followed by an introduction from Sergio Rolando, Council Treasurer of the City of Turin; a representative of the Guardia di Finanza (GdF); Alessandro Solidoro, Counsellor at the Consiglio Nazionale dei Dottori Commercialisti e Degli Esperti Contabili (CNDCEC); Gaetano Ragucci, President at the Associazione Nazionale Tributaristi Italiani (ANTI); and Volker Kaiser, Vice-President at the Bundessteuerberaterkammer (BStBK).

The first panel entitled "Future of Global Tax Policy" discussed how the future will drive tax policy issues worldwide. Krister Andersson, Vice President of the Employers' Group, European Economic and Social Committee (EESC); Gladys Olajumoke Simplice, President of the West African Union of Tax Institutes (WAUTI); Bert Zuijdendorp, European Commission; Bruno Ferroni, Professor at the Università Cattolica del Sacro Cuore; and Euney Marie J. Mata-Perez, President of Asia-Oceania Tax Consultants' Association (AOTCA) were the speakers on the first panel, moderated by Piergiorgio Valente, President of CFE Tax Advisers Europe.

The second panel was moderated by Stella Raventós-Calvo, Chair of the CFE Fiscal Committee, and discussed the future of Corporate Income Tax and VAT. João Félix Pinto Nogueira, Deputy Academic Chairman at IBFD; Gaetano Ragucci, President of ANTI; Francesca Mariotti, Director of Tax Policies at Confindustria; and John Voyez, Partner at Smith & Williamson LLP debated how digitalisation will affect direct and indirect taxation.

On the third panel, David Russell QC, Deputy Chairman at the Society of Trust and Estate Practitioners (STEP); Nii Ayi Aryeetey, Immediate Past President of WAUT and Glyn Fullelove, President of the Chartered Institute of Taxation (CIOT), discussed the future of the global tax profession. The panel was moderated by Wim Gohres, Chair of the CFE Professional Affairs Committee.

The fourth panel was dedicated to debate the future of business models and tax sustainability. Ian Hayes, Chair of the CFE Tax Technology Committee, moderated high level discussion among Eric Herren, from the International Institute for Counter Terrorism; Massimo Getto, Vice-President and CFO at Viasat Group; Glyn Fullelove, President of the Chartered Institute of Taxation (CIOT); and Gilberto Gelosa, CNDCEC.

Gary Ashford, CFE Vice-President, gave a closing speech to the GTAP Global Conference 2019, followed by Gabriele Fontanesi, International Association of Financial Executives Institutes (IAFEI); Mario Garavoglia, President of the Center for Criminal Tax Law (CDPT); Gilberto Gelosa, CNDCEC; Luca Asvisio, President of the Ordine Dei Dottori Commercialisti e Degli Esperti Contabili di Torino (ODCEC); and Ernesto Ramojno, President of the Piemonte-Valle D'Aosta section, ANTI.

12th European Conference on Tax Advisers' Professional Affairs

Robby Houben, Katerina Boguslavska, Dick Barmentlo, Nilimesh Baruah, Samantha Bourton

Katerina Boguslavska, Dick Barmentlo and Nilimesh Baruah

The 12th European Conference on Tax Advisers' Professional Affairs, hosted by CFE Tax Advisers Europe and the Institut des Avocats Conseils Fiscaux (IACF), took place on Friday 29 November 2019; this year entitled "Making Anti-Money Laundering More Effective For Tax Advisers". Two panels of expert speakers considered the international approach against tax and financial crime as well as the risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion.

With the introduction of various compliance obligations arising out of the EU anti-money laundering rules, that have been introduced by the 5th Anti-Money Laundering Directive ("AML"), panellists also discussed the issues of introduction of beneficial ownership registers and the related trends of making such registers public, as well as the existing FATF Standards and Recommendations that build on other EU transparency initiatives to prevent money laundering. As such, the panellists addressed the newly established regulatory environment as well as the background issues arising from various public revelations such as the Panama Papers, and how those affected the public industries including tax advisory services and financial institutions, and how the OECD efforts in fighting money laundering by the unit on Tax & Crime address these problems.

The Panel 1 discussion addressed the international approach against money-laundering, and was chaired by Dick Barmentlo, Delegate of the CFE Professional Affairs Committee. As the keynote speaker, Nilimesh Baruah from the OECD Centre for Tax Policy and Administration presented the OECD work related to tax and crimes. Mr Baruah discussed the increasingly complex and innovative forms of tax evasion and other financial crimes as well as the intrinsic link between such crime and the use of corporate vehicles. Coinciding with the 10th Anniversary of the OECD Global Forum on Tax Transparency and Exchange of Information, Mr Baruah highlighted the indispensable role of the Global Forum in improving the transparency tools worldwide and the role of the Forum in providing governments tools to exchange data on previously opaque information, and give enforcement authorities means to address issues arising from the opacity of such structures for the benefit of their citizens. Dr Kateryna Bogouslavska, Project Manager of the AML Basel Index and formerly a researcher at Chatham House explained the relevance of the Basel Index, a research based ranking of countries' exposure to ML and TF risks. Dr Bogouslavska also discussed the tax related risks and the relevance for tax advisers of the data and analysis contained in the publicly available Basel AML index.

In the same panel discussion, a UK perspective on the AML approach was presented by Samantha Bourton of the University of the West of England, who described the UK as one of the pioneer jurisdictions in implementing key AML international obligations, often going well beyond the minimal requirements in EU legislation. Finally, Dr Robby Houben, professor of financial law at the University of Antwerp discussed the emergence and proliferation of cryptoassets and the risks for money laundering inherently contained in such new technologies largely based on distributed legers such as blockchain. In conclusion, Dr Houben suggested that the perceived risks need to be addressed with future-proof regulation and enforcement, rather than 'blaming' the technology itself, which should be harnessed for wider societal benefit.

The second panel examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion. The panel discussion was chaired by Heather Brehcist, Head of Professional Standards at the Chartered Institute of Taxation (UK) and Delegate of the CFE Professional Affairs Committee.

Panellists considered the effectiveness and the impact of existing EU rules and the new requirements of the 5th AML Directive, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership. Speakers also discussed the impact of enhanced cooperation and exchanges of information provided for between the EU and Member States under the 5th AML Directive. In addition, panellists discussed compliance with and implementation of the measures by tax advisers in practice and the information available to supervisory bodies to facilitate their obligations under the Directive.

Wim Gohres, Chair of the CFE Professional Affairs Committee and


Wim Gohres, John Binns, Heather Brehcist, Christian Leroy and Gary Ashford

Wim Gohres opening the 12th CFE European Professional Affairs Conference in Paris


Wim Gohres, Nilimesh Baruah and Ian Hayes


CFE Professional Affairs Conference in Paris


CFE Professional Affairs Conference in Paris


Damir Brajković, Karima Baakil and Ivan Čevizović

John Binns, Partner BCL Solicitors UK, presented the AML rules in practice. Mr Gohres presented the application and administration of the AML rules in practice from the perspective of an AML compliance officer in the Netherlands. Mr Binns highlighted the risks from a UK perspective, and the challenges and opportunities arising out of the potential regulatory divergence between the EU and the UK post-Brexit. Christian Leroy, a Member of the Board of the Conseil National des Barreaux, France, compared and contrasted the differences in the implementation of the European AML regime across EU jurisdictions, primarily identifying the issue of the original intent of the AML regime to apply to the financial sector, such as banks, and subsequently being adopted to the non-financial sectors. Lastly, Gary Ashford, Vice-President of CFE Tax Advisers Europe, discussed the approach to civil treatment of tax fraud, evaluating the possibilities and risks, the client perspective on such issues, reputational risks and transparency issues arising out of the international legal obligations such as DAC and OECD-based instruments for exchange of information. Mr Ashford highlighted the issues related to civil investigations of tax fraud, such as contractual disclosure facilities and the negotiated financial settlement.

Mr Bruno Gouthière, Executive Board Member of CFE Tax Advisers Europe and Partner at CMS Francis Lefebvre, closed the 12th European Conference on Tax Advisers Professional Affairs, commenting on the extent to which the professional landscape for tax advisers has changed in the past years and the importance of such discussions concerning obligations for tax advisers that are not necessarily related to their daily tax advisory role, but which have a significant impact on the exercise of the tax profession.


Roundup of Tax
Technical News

BRUSSELS I 7 OCTOBER 2019

1. CFE Celebrates 60th Anniversary in Torino

Under the high patronage of the European Parliament, CFE Tax Advisers Europe celebrated its 60th Anniversary with a series of events, including General Assembly, the inaugural Global Tax Advisers Platform conference and technical committee meetings held over three days in Torino, Italy, hosted by the Italian member organisations of CFE - Associazione Nazionale Tributaristi Italiani (ANTI) & Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC).

CFE President Piergiorgio Valente welcomed the delegates and high-level guests, and thanked the Member organisations of CFE, the Italian host member organisations, and the delegates for their commitment and their continuous support in achieving the goals and objectives of CFE Tax Advisers Europe over the many years.

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration addressed the General Assembly, highlighting the long-standing collaboration between the CFE and the OECD. Mr Saint-Amans said that CFE has been an active contributor to OECD's work since its inception in 1959 - only a few years before the publication of the 1963 OECD Model Tax Convention. Mr Saint-Amans welcomed CFE's recent contributions to OECD's public consultations and presented the upcoming OECD agenda on the taxation challenges of the digital economy.

Representing the European Commission, Bert Zuijdendorp discussed the important role that stakeholders like CFE play in the taxation policy initiatives of the EU. Mr Zuijdendorp also reflected on the synergy of the work undertaken by the OECD and the EU.

In a written contribution for the CFE's 60th Anniversary, Mr Valère Moutarlier, Director of Direct Taxation, European Commission said: *"CFE has been a prominent and constructive actor in the EU's tax arena for many years now. Its contributions to consultations, its submission of well-researched position papers and its membership in the Platform on Tax Good Governance are just a few of the ways in which it has brought its views and ideas to our attention. This Commission relies heavily on vocal, active and knowledgeable stakeholders for well-informed policy-making and CFE certainly meets this description. As we move forward now, towards a new mandate and a renewed agenda for taxation policy in Europe, I am sure that CFE will continue to liaise closely with the Commission and make its mark."*

The CFE Tax Advisers Europe was honoured to receive the patronage of the European Parliament of its 60th Anniversary, confirming the close links between the objectives of CFE's initiatives and the values of the European Union. In a written statement, the President of the European Parliament, Mr David Sassoli, said: *"The institution I have the honour to preside over greatly appreciates the professional and committed work of your organisation. The European Parliament very much admires the aim of your initiative, which is to present* *the goals of your organisation from its beginnings 60 years ago and to examine the close relationships forged with the European institutions over the years. It also highly values your activity as an important partner in the last European elections campaign."*, the European Parliament president said.

More information on CFE's Anniversary is available on the CFE website.

2. OECD to Issue New Digital Tax Proposals on Wednesday

Speaking at the CFE events in Torino, the Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans confirmed that the new Secretariat proposals concerning the taxation challenges of the digital economy will be published on Wednesday, with an upcoming public consultation scheduled for 21-22 November.

The proposals will outline the so-called 'unified approach', which will likely centre on a framework that is relying on the arm's length principle for the traditional company transactions and a formulary method for apportionment of the residual profits.

More detail will be released on Wednesday – save the date and register for the upcoming OECD Tax Talks on 9 October.

3. Global Tax Advisers Platform Issues Torino-Busan Declaration

On 3 October, on the occasion of the Global Tax Advisers Platform (GTAP)'s inaugural conference in Turin, the GTAP founding bodies issued the Torino-Busan Declaration. In this document, GTAP sets out four key short-term priorities to pursue its fundamental purpose: the promotion of public interest by ensuring the fair and efficient operation of national and international tax systems.

The four priorities highlighted in the Declaration are:

- Tax for Growth;
- Sustainable Tax Policies;
- Tax and Digitalisation;
- Taxpayers' Rights and Certainty in a Fast-Paced World.

We invite you to read the Press Release for further information about the Torino-Busan Declaration. A copy of the document will be made available on the CFE website in due course.

4. EU Commissioner-Designate for Economy Approved at European Parliament Hearing

Paolo Gentiloni, Commissioner-Designate for the Economy (responsible for taxation) was approved at the Committee on Economic and Monetary Affairs hearing which took place on 3 October. During the hearing, Mr Gentiloni vowed that tax issues would be top of the agenda, with plans to introduce a carbon tax, fuel tax, and pursue taxation of the digital economy should international agreement at OECD level fail. Other priorities include the common consolidated corporate tax base, modifying the way in which decisions in taxation matters are taken by making use of Paserelle clauses to allow for qualified majority voting, creating a fraud proof and future proof VAT system, and making full use of the list of non-cooperative jurisdictions on tax matters to combat harmful tax regimes.

Plenary will vote on whether or not to elect the Commission as a whole on 23 October.

5.

Platform for Collaboration on Tax Issues Draft Transfer Pricing Toolkit

The Platform for Collaboration on Tax, a joint initiative of the IMF, OECD, UN and World Bank Group, has issued a draft toolkit designed to help developing countries in the implementation of effective transfer pricing documentation requirements. The toolkit considers current approaches of tax administrations concerning documentation for transfer pricing analysis and policy matters that may give guidance to developing countries.

The Platform for Collaboration on Tax are seeking input on this draft of the toolkit by 8 November 2019. Particular points concerning which the Platform is seeking input include: whether the draft toolkit addresses all the relevant considerations for the design of an effective transfer pricing documentation regulatory system; whether particular approaches (e.g. penalties or compliance incentives) are especially beneficial for limited capacity developing countries, in terms of enforcement of transfer pricing documentation; whether there other transfer pricing documentation requirements not covered in this toolkit that should be considered; and what additional considerations and/or tools can be included to assist developing countries to implement effective transfer pricing documentation.

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BRUSSELS I 14 OCTOBER 2019

1. OECD Seeks Comments on 'Unified Approach' Proposals

The OECD has published the latest Secretariat proposals for taxation of the digitalising economy on basis of the 'unified approach' under Pillar One, which are the basis for further negotiations among the Members of the Inclusive Framework. Members are expected to approve the new set of rules in January 2020. Under the proposed approach, new taxation rights for market jurisdictions are recognised as a matter of novelty. Conversely, under present international tax rules, zero profit could be allocated to any nexus not based on physical presence. The new rules are intended to apply to companies that derive value from consumer-interaction with users in market jurisdictions. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, through formulary apportionment and use of proxies such as sales.

Commenting, the OECD Secretary-General said of the new proposals: *"We're making real progress to address the tax challenges arising from digitalisation of the economy, and to continue advancing towards a consensus-based solution to overhaul the rules-based international tax system by 2020. This plan brings us closer to our ultimate goal: ensuring all MNEs pay their fair share. Failure to reach agreement by 2020 would greatly increase the risk that countries will act unilaterally, with negative consequences on an already fragile global economy. We must not allow that to happen,"* Mr Angel Gurría said.

Stakeholders are invited to send comments on the policy, technical and administrability issues raised by the proposal before 12 November 2019, 12:00 CEST, by email to TFDE@oecd.org in Word format. A public consultation is scheduled for 21-22 November in Paris.

2. Vestager: State Aid Enforcement Won't Give Us Fair Tax Systems

The European Parliament continued the confirmation hearings of the new Commissioners designated by the European Commission President-Elect Ursula von der Leyen. Margrethe Vestager, nominated as Executive Vice-President responsible for the Digital Age, and oversight of the competition and State aid policy and enforcement in the Single Market, passed the confirmation hearing of the relevant European Parliament committees last week. Speaking in Brussels on 8 October, Vestager confirmed EU Commission's intention to overhaul the taxation rules to better serve the European interests. "*We need to reform the tax rules to achieve (the fair taxation) goal, the enforcement of the State aid rules alone will not give Europe fair tax systems*", Ms Vestager stated. The Commissioner, however, intends to continue using Commission's State aid powers to scrutinise individual tax rulings in the EU Member states.

Answering MEPs' tax policy questions, Vestager pledged her commitment to introducing CCCTB and public CbCR for taxation matters, drawing a parallel with the success of such public reporting in the financial sector. On the digital tax front, Vestager reiterated the mission statement of President-Elect von der Leyen, who promised a digital tax in the EU by 2020 if the OECD negotiations fail. *"It is difficult to be optimistic about taxation, but surprising things can happen"*, Vestager said. In a message to US tech companies, Vestager said that the Commission will look at other measures to ensure a level playing field, beyond fines. As part of such mission, Vestager will seek to protect European consumers from market dominance and abuse, whilst helping European companies to compete globally in a digital age. As a Commissioner who oversaw the biggest fines and tax assessments of US tech companies for breach of EU competition rules, Vestager warned that "*in an era of surveillance capitalism, you are not searching Google, but Google is searching you".* Finally, Vestager said that at present the Commission is not pursuing policy of break-up of the tech companies on antitrust grounds, saying that such policy would be too intrusive and very far reaching.

3. Foreign Losses and Territoriality: CFE Statement on C-575/17 *Sofina*

CFE Tax Advisers Europe has published an Opinion Statement of the ECJ Task Force on the *Sofina*-case, in which the Fifth Chamber of the Court of Justice of the EU delivered its decision on 22 November 2018. In the decision, the Court held that the imposition of French dividend withholding tax violated the freedom of movement of capital in light of the non-resident's overall loss situation. CFE Tax Advisers Europe note that the Court's decision in *Sofina* may have extended the standard of comparability, requiring to take into consideration the (foreign) non-dividend income of the recipient when comparing the tax treatment of domestic and outbound dividends. This comparator, however, upsets the principle of territoriality, as accepted by the Court in *Futura* and *Centro Equestre*, by requiring the source State to take into account losses that the non-resident taxpayer has in the residence State.

Taken at face value, *Sofina*'s impact may extend well beyond withholding taxes (specifically) and dividend taxation (more generally) by attaching a "no-loss" condition to all source State taxing rights. It may arguably even bar the PE State from taxing profits attributable to that PE if the foreign head office is in a loss-making position. Moreover, applying *Sofina* to everyday international tax law might also not be an easy task and push administrative feasibility to its limits. The Court effectively seems to propose a non-discriminatory deferral of taxation that is combined with a domestic regime that leads to a subsequent recapture if (and only if) the non-resident taxpayer becomes profitable during a subsequent tax year, the CFE statement concludes.

4. EU Considering Stricter Anti-Money Laundering Rules

EU's Financial Affairs Council (ECOFIN) considered on 10 October further harmonisation of the EU Anti-Money Laundering (AML) regime by upgrading the present AML directives to a regulation, an EU law instrument which is directly enforceable in all EU Members states without further implementing acts at state level. The ministers also discussed concentrating the AML supervisory activities in a single pan-European body.

On behalf of Finland's Presidency of the EU, Mika Lintilä, Minister for finance said: *"Effectively tackling corruption, trafficking, tax evasion or terrorism means effectively tackling the illegal money flows that finance these activities. As crime becomes increasingly cross-border, the EU needs to adapt its regulatory framework to ensure the security of its citizens and the integrity of its financial system."*

Further questions concerning the scope of EU's AML regime will be considered in due course, with conclusions expected to be adopted at the Council meeting on 5 December.

5.

CFE Conference on AML Rules: Paris – 29 November

The 12th European Conference on Tax Advisers' Professional Affairs, organised by CFE Tax Advisers Europe and the *Institut des Avocats Conseils Fiscaux* (IACF), will be held in Paris, France, on Friday 29 November 2019 from 9am to 4pm, this year entitled "Making Anti-Money Laundering Rules More Effective For Tax Advisers".

The conference will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context as well as the effect this has on tax evasion. Panellists will consider the effectiveness and the impact of existing EU rules and the new requirements of the 5th AML Directive, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership.

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BRUSSELS I 21 OCTOBER 2019

1. EU and the United Kingdom Reach a New Withdrawal Agreement

The European Commission issued a recommendation to the EU Member states to endorse a renegotiated Withdrawal Agreement with the UK, including a revised Protocol on Northern Ireland, and a revised Political Declaration defining the post-Brexit framework of the EU-UK future relationship. Under the Agreement, Northern Ireland will comply with certain rules of the EU Single Market, avoiding a 'hard border' on the island of Ireland, while ensuring that Northern Ireland remains part of the UK's customs territory.

The Political Declaration reflects on UK's economic integration with the EU over decades of membership, resulting in complex and integrated supply chains, which will serve as a basis for a future economic partnership, encompassing a Free Trade Agreement, as well as sectoral cooperation. The Agreement allows the UK to develop an independent trade policy, unconstrained by the EU's Common Commercial Policy, at the same time ensuring a level playing field for open and fair competition.

The United Kingdom has undertaken commitments to maintain a robust framework for State aid control that prevents undue distortion of competition, commitment to the EU principles of good governance in the area of taxation and to the curbing of harmful tax practices. Equally, the UK Government undertook commitments to maintain EU's harmonised standards at current levels, as provided by the common rules of the Single Market.

The Withdrawal Agreement will only enter into force upon successful ratification by the UK Parliament and the other EU Member states. The European Council President Donald Tusk has acknowledged receipt of a letter from the UK Government seeking an extension of the agreed deadline for UK's exit from the European Union, which Mr Tusk will consider with the EU leaders.

2. UN Tax Committee Meeting: Taxation and SDGs

The 19th Session of the UN Committee of Experts on International Cooperation in Tax Matters held in Geneva on 15- 18 October saw a debate on the relevance of taxation policy for the attainment of Sustainable Development Goals (SDGs), among other topics. Other agenda items included the tax challenges of the digitalisation of the economy, update of the UN Nations Model Double Taxation Convention between Developed and Developing Countries, production of a UN Handbook on Tax Dispute Avoidance and Resolution as well as an update of the UN Transfer Pricing Manual.

Speaking on behalf of the United Nations Department of Economic and Social Affairs, Ms Caroline Lombardo, Acting Chief of the UN International Tax and Development Cooperation Branch highlighted the "important role of progressive tax systems and SDG-oriented fiscal policies: not only to raise revenue to finance sustainable development but also to reduce inequality, promote inclusive growth and protect the environment."

As a follow-up to the UN first High-level Dialogue on Financing for Development and the Addis Ababa Action Agenda of 2015, Ms Lombardo stressed the critical role of the United Nations in international tax cooperation and shaping tax standards to ensure more inclusive process, whilst balancing such changes with greater certainty for taxpayers and governments. "*Strengthened tax administration and collection are critical and must be accompanied by further transparency on budgets and expenditures, to foster tax morale and trust in governments. Global action is needed to close loopholes and safeguard country efforts to mobilise domestic resources, including through tax cooperation that promotes favourable investment and trading climate that can generate jobs, expertise, a sense of independence, dignity and security*", the UN official added.

3. G20 on Digital Taxation: Good Direction, But Not Quite There Yet!

The Ministry of Finance of Japan published a press-release from the Washington DC G20 meeting of finance ministers and governors, a form of inclusive political gathering where governments of some developing countries are represented, stating that they "welcome the efforts of OECD's Secretariat" with the proposed unified approach under Pillar One. The G20 meeting highlighted the importance of delivering a fast, Inclusive Framework-supported solution, by the end of 2020, with the outlines of the new system sketched by February 2020.

India's Finance Minister Nirmala Sitharaman reportedly endorsed the OECD-proposed new nexus rules, welcoming the direction which would establish taxable nexus for market jurisdictions irrespective of the physical presence of a company. Ms Sitharaman however warned that in addition to delivering fair profit allocation, the solutions need to be "simple to implement and simple to administer".

OECD's Secretary General called on the ministers to personally involve to reach a swift solution, stating that "*preliminary results from our impact assessment and economic analysis show that revenue would be rightfully shifted to market jurisdictions. It is mainly investment hubs that lose out*.", Mr Gurria told G20 finance ministers. Prior to the meeting, Mr Gurria submitted a Report to the G20 members, seeking to address the existing challenges of tax digitalisation for the global economy and the interrelated tax transparency issues.

The OECD public consultation on the new Secretariat-proposed unified approach under Pillar One is open for comments by interested parties until 12 November.

4. EU 'Blacklist' Guidance on Foreign-Source Income Exemption Regimes

In the context of the EU evaluation of tax good governance standards by third countries and the list of non-cooperative jurisdictions for tax purposes performed by the Code of Conduct Group (Business Taxation), the Council of the EU published Guidance on foreign source income exemption regimes. The published EU guidelines aim to help third countries comply with EU's tax standards, in particular those that the EU considers harmful tax practices.

According to the document, an overly broad definition of income excluded from taxation, notably foreign sourced passive income without any conditions or a nexus not complying with the PE definition contained in the OECD Model Tax Convention, shall be considered harmful practices aimed at facilitating double non-taxation. These guidelines will serve as a basis for the continued 2019 screening of third country jurisdictions.

The Council recently endorsed removal from the EU black and/ or greylist of a number of jurisdictions, including the United Arab Emirates, Albania, Costa Rica, Serbia, Switzerland, Mauritius and the Marshal Islands, establishing that those countries have implemented reforms to comply with EU tax good governance standards. Nine jurisdictions remain on the EU blacklist: American Samoa, Belize, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

5.

CFE Conference on Anti-Money Laundering: Paris – 29 November 2019

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The conference will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments, compliance with the new and existing EU Anti-Money Laundering Directives and efforts taken to address money laundering in the broader international context as well as the effect this has on tax evasion. Panellists will consider the effectiveness and the impact of existing EU rules and the new requirements of the 5th AML Directive, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership.

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BRUSSELS I 28 OCTOBER 2019

Tax Transparency: European Parliament Push on Public CbCR

The European Parliament voted on 24 October a resolution backing EU-wide public country-by-country reporting of taxes paid by large multinational companies. The text of the proposed directive was already approved by the European Parliament in 2017, but Member states could not agree on the way forward. The European Parliament resolution was voted by 572 in favour, 42 against and 21 abstentions, urging Member states to enter into a dialogue with the European Parliament to finally adopt the directive.

The impetus came from the European Parliament hearings of the European Commission President-Elect Ursula von der Leyen, and Vice-Presidents Vestager and Dombrovskis, who promised that public country-by-country reporting would become reality with respect to taxation. The adopted European Parliament resolution "urgently calls" on the Finnish presidency of the EU and the Member States to finalise the legislative process as soon as possible and prioritise work on the public CbCR proposal on the basis of the Parliament's text.

According to the proposal, multinational firms with worldwide turnover of €750 million or more would be required to publish certain income tax related data on a common template in each tax jurisdiction in which the firm or its subsidiary operated, publicly accessible on the company website and a public register operated by the European Commission.

OECD 'Unified Approach' Public Consultation on 21-22 November in Paris

The OECD is inviting interested parties to a public consultation on 21-22 November in Paris on the Secretariat Proposals for a Unified Approach under Pillar One concerning the taxation challenges of the digitalisation of the economy. The participants will be selected from stakeholders that have submitted timely response on the request for input. This meeting will be broadcast live on OECD WebTV.

As reported by CFE, the G20 finance ministers "welcomed the efforts of OECD's Secretariat", highlighting the importance of delivering a fast, Inclusive Framework-supported solution, by the end of 2020, with the outlines of the new system sketched by February 2020. The discussions are ongoing, with countries like India warning of the complexity of the task. In addition to delivering fair profit allocation, the solutions need to be "simple to implement and simple to administer", India's Finance Minister Nirmala Sitharaman reportedly said, welcoming the direction which would establish taxable nexus for market jurisdictions irrespective of the physical presence of a company.

Tax Dispute Resolution: BEPS Action 14 Peer Review Reports

In the framework of the work undertaken under BEPS Action 14 and the improvement of the tax dispute resolution mechanisms, the OECD issued the 6th round of peer review reports, assessing the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project.

The published reports include jurisdictions such as Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania and South Africa with over 230 targeted recommendations that will be followed up in stage 2 of the peer review process. BEPS Action 14 seeks to improve the tax-dispute resolution mechanisms via the Inclusive Framework peer-review process, which looks into the compliance with the minimum standard reviewed and monitored by peer countries.

CFE's 60th Anniversary *Liber Amicorum* Published in Cooperation With IBFD

"60th Anniversary *Liber Amicorum*", a book of high-level technical and policy contributions produced for the occasion of the 60th Anniversary of CFE Tax Advisers Europe, edited by Servaas van Thiel, Piergiorgio Valente and Stella Raventós-Calvo, was published in partnership with IBFD. IBFD also regularly publishes CFE's relevant opinion statements and position papers in European Taxation, the official journal of CFE Tax Advisers Europe.

Renowned tax experts discuss key tax issues that challenge tax advisers, tax academics and tax officials on a daily basis. Part I looks at EU decision-making in the tax area and some of the challenges of exercising tax jurisdiction in a digital world (taxing digital business models, robot taxes, etc.). Part II discusses the legal limits, particularly in Europe, to the traditional ways in which states exercise their tax jurisdiction (e.g. the need for equal treatment, the prohibition of discriminatory exit taxes and the ECJ *Sofina* decision) and the closely related issue of taxpayer rights (under EU law and the European Convention on Human Rights). Part III reports on recent developments in the fight against tax avoidance and tax evasion (e.g. the OECD BEPS Action Plan, the European Union's external "tax good governance" policy, international exchange of information, transfer pricing documentation requirements, the ECJ Denmark decisions and the Commission's Apple decision). Part IV presents an in-depth analysis of VAT (lessons learned) and suggests new ways forward, including in respect of dispute management (cross-border rulings). Finally, Part V reflects on non-tax issues that may have implications on international taxation and finance. With its practical approach, the book provides an interesting and insightful read for all those involved in international taxation, and is available to buy at the IBFD online library or directly from CFE Tax Advisers Europe (info@taxadviserseurope.org) for CFE delegates.

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BRUSSELS I 5 NOVEMBER 2019

EU Ministers to Discuss VAT-Related Directives

The EU finance ministers sitting at Council level (ECOFIN) will discuss this Friday 8 November three VAT related files and may reach an agreement on the two legislative proposals concerning transmission and exchange of VAT-relevant payment data. In addition, a Directive amending the VAT system as regards the special scheme for small enterprises (SMEs) will be debated.

According to Council discussions, Member states are likely to adopt the proposal on the Directive on the common system of VAT as regards requirements for payment service providers, which adds certain elements and general obligations for payment service providers. Following the 23 October 2019 meeting of the Working Party on Tax Questions, a compromise text was presented at the COREPER meeting of 30 October 2019, with no objections raised by EU Member states. If adopted, these two legislative acts will become effective on 1 January 2024.

As far as the VAT special schemes for SMEs are concerned, the Commission proposals seek to revise existing VAT rules on exemption for SMEs, due to the fact that SMEs at present face disproportionate VAT compliance costs, which as a result distorts competition on both domestic and EU markets.

EU Member states continue to disagree over the annual turnover thresholds for the SMEs VAT exemption. Finland's EU presidency compromise suggested a national threshold of €85 000 and an EU threshold of €100 000, coinciding with the European Commission proposals.

Ahead of the ECOFIN meeting, the Council services noted that a number of Member states "insisted that these thresholds should not be higher, and the Presidency reflected this in the attached compromise text." The 30 October 2019 COREPER meeting saw some Member states indicating a preference for thresholds of 100 000 and 115 000 EUR, respectively. As a result it is not yet clear whether the EU ministers will support the compromise text of the Finish presidency on Friday.

EU finance ministers are also expected to discuss climate financing and digital taxation.

EU: North Macedonia Compliant With EU's Tax Good Governance Standards

The EU's Code of Conduct Group (Business Taxation) concluded on 24 October 2019 that North Macedonia has fulfilled the tax good governance criteria set out by the EU and as a result would be removed entirely from the Annex II jurisdictions. The General Secretariat of the Council of the EU recommends Annex II delisting in a note to the EU Member states for ECOFIN Council approval on 8 November.

As noted by the EU, North Macedonia has ratified the OECD Multilateral Convention on Mutual Administrative Assistance ("MAC") as amended, and the parliamentary instrument of ratification was deposited on 30 September. As a result, the Multilateral Convention will enter into force on 1 January 2020. North Macedonia is an EU membership candidate country and is expected to commence EU accession talks with Brussels at the EU summit in Zagreb in May 2020.

3. OECD Releases Further CbCR Implementation Guidance

As a follow-up of BEPS Action 13, the OECD /G20 Inclusive Framework on BEPS has released updated guidance on the implementation and operation of Country-by-Country Reporting (CbCR). The new guidance includes the treatment of dividends, the operation of local filing, the use of rounded amounts in Table 1 of an MNE Group's CbC report and the information that must be provided with respect to the sources of data used.

4. CFE Conference On Anti-Money Laundering: Paris - 29 November 2019

The CFE Tax Advisers Europe is pleased to invite you to the 12th European Conference on Tax Advisers' Professional Affairs, entitled "Making Anti-Money Laundering More Effective For Tax Advisers". This year, jointly organised by CFE and the Institut des Avocats Conseils Fiscaux (IACF), the conference will take place at the Maison de l'Artisanat in Paris, France, on Friday 29 November 2019 from 9:15 am to 4 pm.

Considering all the recent developments on the anti-money laundering front, we invited representatives of the OECD Tax & Crime Division to speak about the international approach against money laundering concerning tax evasion and tax crimes, alongside speakers from academia, practice and other international organisations. Tax practitioners from the Netherlands, France and the United Kingdom will shed light on the effect of anti-money laundering directives in practice. We expect that the speakers will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments and will also discuss the compliance with the new and existing EU Anti-Money Laundering Directives, as well as the efforts taken to address money laundering in the broader international context.

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5. CFE's 60th Anniversary *Liber Amicorum* Available to Purchase

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BRUSSELS I 12 NOVEMBER 2019

OECD Seeks Comments on Pillar Two Minimum Taxation Global Anti-Base Erosion Proposal

The OECD on 8 November published a further public consultation document concerning Pillar Two of its two-pillar approach to addressing the taxation challenges of the digitalising economy, the so-called "Global Anti-Base Erosion Proposal", or "GloBE" proposal, which seeks to address outstanding BEPS issues by introducing a global minimum tax and providing *"jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation".* The approach would seek to apply an income inclusion rule and deduction denial in tandem to achieve the intended aim of global anti-base erosion.

The consultation document seeks input concerning specific technical issues of the design of the GloBE proposal under Pillar Two, in particular:

1. *the use of financial accounts as a starting point for determining the tax base;*
2. *the extent to which an MNE can combine income and taxes from different sources in determining the effective (blended) tax rate on such income; and*
3. *stakeholders' experience with, and views on, carve-outs and thresholds that may be considered as part of the GloBE proposal.*

Interested parties will be able to submit comments up to 18:00 (CET) on 2 December 2019 by e-mail to taxpublicconsultation@oecd.org via Word format. Following the written consultation process, a public consultation meeting will be held on 9 December in Paris.

ECOFIN Reaches Agreement on VAT-Related Directives

On Friday 8 November, EU finance ministers sitting at Council level (ECOFIN) reached agreement on a number of significant indirect tax files, concerning: transmission and exchange of VAT-relevant payment data; amendment of the VAT system as regards the special scheme for small enterprises (SMEs); and the administrative burden for trade in goods subject to excise duty.

The proposals as regards the exchange of VAT-relevant payment data, aimed at reducing VAT fraud, will introduce requirements for records to be kept by payment service providers concerning cross-border payments related to e-commerce. A central electronic system will be established for storage of the information, which will also be accessed and processed by Member States' anti-fraud officials.

The proposals concerning the VAT special schemes for SMEs will revise existing VAT rules for SMEs, to address the fact that SMEs at present face disproportionate VAT compliance costs, which as a result distorts competition on both domestic and EU markets. The compromise text provides for qualifying businesses to be able to use the SME exemption across the EU, subject to annual turnover thresholds, namely a national threshold of €85,000 and an EU threshold of €100,000, coinciding with the European Commission proposals. Issues concerning the amounts of the thresholds appear to have been resolved in order for the proposals to be agreed.

3. Council of the EU Updates List of Non-Cooperative Tax Jurisdictions

Following on from the recommendations of the Code of Conduct Group (Business Taxation) contained in a Note to Council setting out its evaluation of tax good governance standards by third countries, the ECOFIN Council on 8 November approved the changes recommended to the list of non-cooperative jurisdictions for tax purposes.

The Council accordingly endorsed the removal of Belize from the blacklist to the grey list, after establishing that it had implemented reforms to comply with EU tax good governance standards. It will be removed from the Annex II grey list in the future, subject to implementation of further changes concerning its foreign source income exemption regime. On the basis that North Macedonia has fulfilled the tax good governance criteria set out by the EU, the ECOFIN Council also approved the recommendation that it be removed entirely from the Annex II jurisdictions list.

Eight jurisdictions now remain on the EU blacklist: American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

4. Reminder: CFE Conference on Anti-Money Laundering, Paris - 29 November 2019

There are limited places remaining for the CFE Tax Advisers Europe 12th European Conference on Tax Advisers' Professional Affairs, entitled "Making Anti-Money Laundering More Effective For Tax Advisers". This year, jointly organised by CFE and the Institut des Avocats Conseils Fiscaux (IACF), the conference will take place at the Maison de l'Artisanat in Paris, France, on Friday 29 November 2019 from 9:15 am to 4 pm.

Considering all the recent developments on the anti-money laundering front, we invited representatives of the OECD Tax & Crime Division to speak about the international approach against money laundering concerning tax evasion and tax crimes, alongside speakers from academia, practice and other international organisations. Tax practitioners from the Netherlands, France and the United Kingdom will shed light on the effect of anti-money laundering directives in practice. We expect that the speakers will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments and will also discuss the compliance with the new and existing EU Anti-Money Laundering Directives, as well as the efforts taken to address money laundering in the broader international context.

Register now to secure your place at the conference.

5.

International Tax Specialists Group Conference in Dubai, 6 – 7 November 2019

The 2019 International Tax Specialist Group Conference took place last week, from 6 to 7 November, in Dubai, at which renowned tax experts presented and discussed key tax issues that challenge tax advisers, tax academics and tax officials on a daily basis.

President of CFE Tax Advisers Europe, Professor Piergiorgio Valente, addressed attendees concerning taxpayer rights and morality, substance requirements in the EU and the future of taxation. CFE Vice-President, Gary Ashford, participated in a panel concerning the digital economy, examining bitcoin, blockchain and taxation of digital business on the internet. CFE Fiscal Committee Delegate Paul Kraan presented the latest developments in tax treaty issues and, in particular, investment protection.

Representatives and speakers from fellow founding institutions of the Global Tax Advisers Platform, including David Russell QC and Thomas Lee from STEP, and Euney Maria Mata-Perez from AOTCA, were also in attendance, and presented at the conference.

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BRUSSELS I 18 NOVEMBER 2019

OECD Publishes Stakeholder Comments on Pillar One Consultation

The OECD has now published the comments submitted by stakeholders to the Secretariat proposals for taxation of the digitalising economy on the basis of the 'unified approach' under Pillar One. Under the proposed approach, new taxation rights for market jurisdictions are recognised as a matter of novelty. The new rules are intended to apply to companies that derive value from consumer-interaction with users in market jurisdictions. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, through formulary apportionment and use of proxies such as sales.

CFE issued an Opinion Statement responding to the consultation highlighting a number of key elements that should be embedded as part of this process, calling for more clarity and early consensus at political level as to the outcome of the process. CFE's statement emphasises the significance of departing from well-established principles of international tax law towards a more complex international tax system which partly introduces formulary apportionment.

A public consultation meeting will take place this week from 21-22 November in Paris. Piergiorgio Valente, President of CFE Tax Advisers Europe, and Aleksandar Ivanovski, Tax Policy Manager of the CFE Brussels Office, will attend the consultation on behalf of CFE Tax Advisers Europe. Registrations are now closed, and the numbers of attendees are limited. Those unable to attend can watch the consultation live on OECD WebTV and the meetings will also be able to viewed later via the OnDemand tab of the OECD platform.

Council of the EU Adopts Company Law Directive

On 18 November, the Council of the EU adopted the second of two Commission proposals initially published in April 2018 on reforming and digitalising EU company law, which aim to make it easier for companies to merge, divide or move within the EU Single Market, whilst preventing fraud and abusive behaviour in cross-border operations. The proposals were adopted by the EU Parliament in April 2019.

The rules allow companies to register, set up new branches or file documents online. As concerns cross-border conversions, mergers and divisions, the EU rules for cross-border conversions and divisions aim to update existing ones to facilitate reorganisation, provided that the operations are genuine. Companies will be required to inform employees on the legal and economic consequences of a cross-border operation, and the Directive introduces mandatory anti-abuse control procedures to prevent cross-border operations which have abusive, criminal or fraudulent aims. This requires companies to demonstrate genuine economic activity at the place of registration, in line with the decision of Cadbury Schweppes. National authorities will be enabled by the provisions of the Directive to block any cross border operations carried out for fraudulent aims.

The directive will enter into force 20 days after publication in the Official Journal of the EU. Member states will have 36 months thereafter to adopt necessary measures for implementation of the Directive.

3. Tax Dispute Resolution: Input Invited on 10th Batch of BEPS Action 14 Peer Reviews

In the framework of the BEPS Action Plan, and steps undertaken under BEPS Action 14 concerning the improvement of the tax dispute resolution mechanisms, the OECD has now invited input concerning the 10th round of peer reviews, in order to assess the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project.

Input is requested in relation to the jurisdictions of: Aruba, Bahrain, Barbados, Gibraltar, Greenland, Kazakhstan, Oman, Qatar, Saint Kitts and Nevis, Thailand, Trinidad and Tobago, the United Arab Emirates and Vietnam. BEPS Action 14 seeks to improve the tax-dispute resolution mechanisms via the Inclusive Framework peer-review process.

Interested parties are requested to submit completed responses to the Peer Review questionnaire via e-mail to fta.map@oecd.org in Word format by 16 December.

4. Reminder: CFE Conference on Anti-Money Laundering, Paris - 29 November 2019

There are limited places remaining for the CFE Tax Advisers Europe 12th European Conference on Tax Advisers’ Professional Affairs, entitled “Making Anti-Money Laundering More Effective For Tax Advisers”. This year, jointly organised by CFE and the Institut des Avocats Conseils Fiscaux (IACF), the conference will take place at the Maison de l’Artisanat in Paris, France, on Friday 29 November 2019 from 9:15 am to 4 pm.

Considering all the recent developments on the anti-money laundering front, CFE invited representatives of the OECD Tax & Crime Division to speak about the international approach against money laundering concerning tax evasion and tax crimes, alongside speakers from academia, practice and other international organisations. Tax practitioners from the Netherlands, France and the United Kingdom will shed light on the effect of anti-money laundering directives in practice. Speakers will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission’s Supranational Risk Assessments and will also discuss the compliance with the new and existing EU Anti-Money Laundering Directives, as well as the efforts taken to address money laundering in the broader international context.

Register now to secure your place at the conference.

Platform for Collaboration on Tax Consultation on Transfer Pricing Toolkit

The Platform for Collaboration on Tax, a joint initiative of the IMF, OECD, UN and World Bank Group, issued a draft toolkit in October 2019 designed to help developing countries in the implementation of effective transfer pricing documentation requirements. Input on the draft toolkit was due by 8 November 2019. The Global Tax Advisers Platform, of which CFE Tax Advisers Europe is a founding member, was pleased to submit a response.

The consultation sought specific input concerning: whether the draft toolkit addresses all the relevant considerations for the design of an effective transfer pricing documentation regulatory system; whether particular approaches (e.g. penalties or compliance incentives) are especially beneficial for limited capacity developing countries, in terms of enforcement of transfer pricing documentation; whether there other transfer pricing documentation requirements not covered in this toolkit that should be considered; and what additional considerations and/or tools can be included to assist developing countries to implement effective transfer pricing documentation.

GTAP welcomed the draft toolkit, and set out its view that the toolkit has significant potential impact in terms of developing uniformity in practice across jurisdictions. GTAP's responses to the consultation questions were based on responses compiled by fellow founding GTAP member, the West African Union of Tax Institutes and its member organisation, the Chartered Institute of Taxation of Nigeria (CITN).

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BRUSSELS I 25 NOVEMBER 2019

OECD Meeting on Pillar One: Stakeholders' Input on the OECD Secretariat Proposals

A public consultation took place at the OECD in Paris on 21 November, with 450 stakeholders in attendance, 300 of which submitted written responses to the OECD Secretariat proposal on the unified approach. Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration confirmed that the work at government representative level is ongoing, with the Secretariat proposal serving as a blueprint for further negotiations. The next Inclusive Framework meeting is scheduled for January 2020.

Representatives from the OECD, the BEPS Inclusive Framework, academics, tax practitioners and advisers and representatives of businesses addressed substantive issues arising from the Unified Approach proposal, in particular scope and nexus, computation of Amount A, elimination of double taxation in relation to Amount A, fixed remunerations under Amount B as well as dispute prevention and resolution. There was an emerging consensus that the new challenges arising from digitalisation were conducive to a shift toward formulary apportionment, however, discussions could not agree on the precise principles underpinning such a shift. In addition, there was some criticism from the floor on the lack of clear principles justifying the departure from the arm's length principle; that the absence of a coherent rationale might potentially undermine the goal to achieve fairness with the new profit allocation rules.

Generally, participants sought clarity on definitions such as residual profits, business within scope of the proposal, the viability of the proposed coexistence of the two systems (existing tax rules under Amount B and C vs. new nexus and taxing rights under Amount A), as well as guarantees for robust and effective dispute prevention and resolution mechanisms. Representatives of business models which traditionally do not derive meaningful value from user interaction ('consumer-facing') sought to be carved out of the new rules. On the administration-side, opportunities for simplification of the rules were also discussed, with suggestions for a central coordinating jurisdiction or one-stop-shop to audit Amount A, such that the parent entity would file a return on behalf of the group entities, informing other jurisdictions of about the portion they would be entitled under Amount A, with a possibility for a single jurisdiction to collect and remit the tax due for the other jurisdictions involved.

CFE issued an Opinion Statement responding to the consultation highlighting a number of key elements that should be embedded as part of this process, calling for more clarity and early consensus at political level as to the outcome of the process. CFE's statement emphasises the significance of departing from well-established principles of international tax law towards a more complex international tax system which partly introduces formulary apportionment.

Code of Conduct Group Report Recommends Updating EU Tax Blacklist

The EU's Code of Conduct Group (Business Taxation) have concluded in a Note to Council setting out its evaluation of tax good governance standards that, as a result of Jordan joining the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inclusive Framework on BEPS on 29 October, it has now fulfilled the tax good governance criteria set out by the EU and as a result Jordan should be removed from Sections 1.2 and 3.1 of Annex II of the Blacklist. The General Secretariat of the Council of the EU recommends in a note to the EU Member states that these changes be approved at the next ECOFIN Council in November.

Eight jurisdictions presently remain on the EU blacklist: American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

Commission Publishes Draft Explanatory Notes on VAT Quick Fixes

The European Commission has published draft Explanatory Notes on EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods ("2020 Quick Fixes"), which the Commission prepared for input and discussion at the upcoming VAT Expert Group meeting.

The explanatory notes set out guidance on Commission's view as to interpretation of Council Directive (EU) No 2018/1910 amending Council Directive 2006/112/EC and Council Implementing Regulation (EU) No 2018/1912 amending Implementing Regulation (EU) No 282/2011 concerning the VAT Quick Fixes. The explanatory notes will not be legally binding on the Member States or the European Commission.

The "Quick Fixes", aimed at rectifying a number of issues in relation to the day-to-day running of the EU VAT system, were adopted by the EU Council in December, and will apply from 1 January 2020. The fixes were designed to address specific issues with EU VAT rules, pending the introduction of a definitive EU VAT Regime, concerning: call-off stock arrangements – simplification and harmonisation of rules regarding call-off stock arrangements, where a vendor transfers stock to a warehouse at the disposal of a known acquirer in another Member State; VAT identification numbers – by the introduction of an identification number for a customer as an additional condition for VAT exemption for intra-EU supplies of goods; chain transactions – simplification and harmonisation of rules regarding chain transactions; and proof of intra-EU supply – introduction of a common framework of criteria of documentary evidence required to claim a VAT exemption for intra-EU supplies.

Czech Government Approves Digital Tax Plan

The Czech Republic's government has approved plans to introduce a digital services tax to apply to businesses making revenue from Czech users' data, in particular targeting advertising, social media platforms, online marketplaces and user data sales.

The proposed tax would impose a 7% digital services tax on domestic digital sales for companies with a global turnover above 750 million Euros, and a national turnover above 100 million Czech koruna.

The proposal will now be considered by the Czech Parliament.

Final Reminder: CFE Conference on Anti-Money Laundering, Paris - 29 November 2019

There are still a limited number of places remaining for the CFE Tax Advisers Europe 12th European Conference on Tax Advisers' Professional Affairs, entitled "Making Anti-Money Laundering More Effective For Tax Advisers". This year, the conference will take place at the Maison de l'Artisanat in Paris, France, on Friday 29 November 2019 from 9:15 am to 4 pm, and has been jointly organised by CFE and the Institut des Avocats Conseils Fiscaux (IACF).

In light of all the recent developments on the anti-money laundering front, representatives of the OECD Tax & Crime Division were invited to speak about the international approach against money laundering concerning tax evasion and tax crimes, alongside speakers from academia, practice and other international organisations. Tax practitioners from the Netherlands, France and the United Kingdom will shed light on the effect of anti-money laundering directives in practice. Speakers will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments and will also discuss compliance with the new and existing EU Anti-Money Laundering Directives, as well as the efforts taken to address money laundering in the broader international context.

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BRUSSELS I 2 DECEMBER 2019

New EU Commission Takes Office on 1 December

The newly elected European Commission / College of Commissioner led by President Ursula von der Leyen took over from Jean Claude Juncker over the weekend becoming the first woman to lead the EU ‘government’. With the first gender-balanced Cabinet, von der Leyen promised to lead a geopolitical Commission that will harness the opportunities of the digital age whilst protecting the ‘European way of life’. The new Economy Commissioner, Paolo Gentiloni, whose portfolio includes taxation will work together with Executive Vice-President Margrethe Vestager who is responsible for overseeing the enforcement of the EU State aid rules as well as making sure that Europe benefits from the digitalisation of the economy.

In her first working day, President von der Leyen pledged to make Europe the first climate neutral continent by 2050. The New Green Deal for Europe includes a revised Energy Taxation Directive. According to the leaked draft, the Commission will present a proposal to revise the Energy Taxation Directive to align it with Europe’s climate ambitions by instructing the Commission services to “send the right pricing signals through appropriate taxation and subsidies policies, reflecting too on the use of competition policy tools that could support such transition”. To that aim, the Commission will pursue efforts to move away from unanimity for taxation policies, and will review the State aid guidelines for environment and energy, to bring them in line with the New Green Deal. Draft Council Conclusions on the EU energy taxation framework also refer to energy taxation as an important fiscal instrument that could steer successful climate-friendly transition towards lower greenhouse gas emissions.

European Commission Will Not Appeal the “Starbucks” State Aid Decision

The European Commission decided not to appeal the judgment of the General Court in the fiscal State aid case *Netherlands v Commission* (Starbucks). In a statement for MLex, a spokesperson for the European Commission stated: "*After carefully assessing the General Court judgment of 24 September 2019 concerning the tax treatment of Starbucks in the Netherlands, the Commission has decided not to appeal the Court’s ruling to the European Court of Justice*," confirming comments by Commission Vice-President Vestager given in an interview.

By way of background, the General Court of the EU delivered on 24 September 2019 the first instance judgments in the fiscal State aid cases of Starbucks and Fiat. In the case *Netherlands v Commission* (Starbucks), the Court annulled the Commission decision, which originally established that the Netherlands had awarded State aid to Starbucks by way of selective fiscal benefits. In *Luxembourg v Commission* (Fiat), the Court dismissed the action for annulment and upheld the Commission decision establishing State aid to Fiat Finance and Trade (now Fiat Chrysler Finance Europe). The Court confirmed Commission's competence to scrutinise individual tax rulings (including transfer-pricing rulings, Advance Pricing Agreements - APAs) that national tax administrations conclude with taxpayers. The judgments further indicate that the General Court accepts Commission's interpretation of the 'arm's length' principle as a 'yardstick' for assessment of the EU law compliance of individual tax rulings with Article 107(1) of the Treaty. The Court also sought to set limits to the Commission's powers in the review of national fiscal State aid measures, by stating that at this stage of development of EU law, the Commission does not have 'autonomous competence' to define 'normal taxation of a company', outside the scope of national taxation rules of each Members state. All General Court decisions are subject to review by the Court of Justice of the European Union.

3. Commission Asks Ireland and Austria to Implement EU-law Compliant Interest Limitation Rules

The EU Commission requested that Austria and Ireland implement interest limitation rule as required by the EU's Anti-Tax Avoidance Directive. According to the Commission, neither Austrian nor Irish existing measures in national law could be considered 'equally effective' to those of Article 4 ATAD, hence are not considered compliant with EU law. If these Member states do not remedy the situation within two months, the Commission could refer them to the Court of Justice of the EU. For the other actions taken by the Commission against Member states, please refer to the infringement package published earlier.

4. ECOFIN Council Meeting on 5 December to Discuss Revision of EU's AML Rules

In addition to discussing urgent climate action through use of the energy taxation instruments, EU finance ministers are expected to adopt conclusions on EU's new anti-money laundering framework, seeking to guide the EU Commission in introducing harmonised EU anti-money laundering rules as well as enhanced anti-money laundering supervision across the EU, primarily addressed to the financial sector.

5. Recap: CFE Conference on AML Rules, Paris - 29 November 2019

The 12th European Conference on Tax Advisers' Professional Affairs, hosted by CFE and IACF, took place on 29 November 2019 entitled "Making Anti-Money Laundering More Effective for Tax Advisers". With the introduction of various compliance obligations arising out of the EU anti-money laundering rules, that have been introduced by the 5th AMLD, panellists also discussed the issues of introduction of beneficial ownership registers and the related trends of making such registers public, as well as the existing FATF Standards and Recommendations that build on other EU transparency initiatives to prevent money laundering. As such, the panellists addressed the newly established regulatory environment as well as the background issues arising of various public revelations such as Panama Papers, how those affected the public, industries including tax advisory services and financial institutions, and how the OECD efforts in fighting money laundering by the unit on Tax & Crime address these problems.

The panel 1 discussion addressed international approach against money-laundering, and was chaired by Dick Barmentlo, Member of the CFE Professional Affairs Committee. As a key-note speaker, Nilimesh Baruah from the OECD Centre for Tax Policy and Administration presented the OECD work related to tax and crimes. Mr Baruah discussed the increasingly complex and innovative forms of tax evasion and other financial crimes as well as the intrinsic link between such crime and the use of corporate vehicles. Coinciding with the 10th Anniversary of the OECD Global Forum on Tax Transparency and Exchange of Information, Mr Baruah highlighted the indispensable role of the Global Forum in improving the transparency tools worldwide. Mr Baruah also spoke of the role of the Forum in providing governments tools to exchange data on previously opaque information, and give enforcement authorities means to address issues arising from the opacity of such structures for the benefit of their citizens.

Dr Kateryna Bogouslavska, of the Basel Institute of Governance and Chatham House explained the relevance of the Basel AML index, a research based ranking of countries' exposure to ML and TF risks. Dr Bogouslavska discussed the tax related risks and the relevance for tax advisers of the data and analysis contained in the publicly available Basel AML index. In the same panel discussion, a UK perspective on the AML approach was presented by Samantha Bourton of the UWA, who described the UK as one of the pioneer jurisdictions in the implementing key AML international obligations, often going well beyond the minimal requirements of the EU legislation. Finally, Professor Robby Houben, of the University of Antwerp discussed the emergence and proliferation of crypto assets and the risks for money laundering inherently contained in such new technologies largely based on distributed legers such as blockchain. In conclusion, Prof. Houben suggested that the perceived risks need to be addressed with future-proof regulation and enforcement, rather than 'blaming' the technology itself, which should be harnessed for wider societal benefit.

The second panel examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU's Risk Assessments, compliance with the new and existing EU AML Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion. The panel discussion was chaired by Heather Brehcist, Head of Professional Standards at the Chartered Institute of Taxation (UK). Panellists considered the effectiveness and the impact of existing EU rules and the new requirements of the 5th AMLD, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership. Wim Gohres, Chair of CFE's Professional Affairs Committee and John Binns, Partner BCL Solicitors UK, presented the AML rules in practice. Mr Gohres presented the application and administration of the AML rules in practice from a perspective of AML compliance in the Netherlands. Mr Binns highlighted the risks, challenge and opportunities arising out of the potential regulatory divergence between EU and the UK post-Brexit. Christian Leroy, a Member of the Board of the Conseil National des Barreaux, France compared and contrasted the differences in the implementation of the AML regime across EU jurisdictions, primarily identifying the issue of the original intent of the AML regime to apply to the financial sector, such as banks, and subsequently being adapted to the non-financial sectors. Lastly, Gary Ashford, CFE Vice-President discussed the approach to civil treatment of tax fraud evaluating the possibilities and risks, the client perspective on such issues, reputational risks and transparency issues arising out of the international legal obligations such as DAC and OECD-based instruments for exchange of information. Mr Ashford highlighted the issues related to civil investigations of tax fraud, such as contractual disclosure facilities and the negotiated financial settlements.

BRUSSELS I 11 DECEMBER 2019

1. US Letter Threatens to Upend OECD Digital Tax Discussions

In a letter to the OECD dated 3 December US Treasury Secretary, Steven Mnuchin stated that the US has *"serious concerns regarding potential mandatory departures from arm's-length transfer pricing and taxable nexus standards—longstanding pillars of the international tax system upon which U.S. taxpayers rely, Nevertheless, we believe that taxpayer concerns could be addressed and the goals of Pillar 1 could be substantially achieved by making Pillar 1 a safe-harbour regime"*.

Were the Pillar 1 proposals to take the form of a safe harbour, this would allow governments to choose to adopt the regime, as opposed to it being mandatory to adopt it. If the approach were to be mandatory for the countries signing up, as was planned up until the US letter being sent, this would become mandatory for example by way of signing a new MLI. It would appear that the US is now proposing the measure be designed as a "safe harbour", meaning that companies could choose to apply or ignore Pillar 1.

In the response to the US letter, Angel Gurria, Secretary-General of the OECD, stated that *"throughout the extensive consultation process, however, we had so far not come across the notion that Pillar 1 could be a safe-harbour regime"*, emphasising that the public consultations held to date *"clearly identified the need for greater tax certainty and administrability"*, noting that this *"is why the OECD proposal on a "Unified Approach" contains a very strong tax certainty dimension"*. The letter notes that the US raising this issue may impact on the ability of the OECD to adhere to the deadlines agreed by the Inclusive Forum.

The US has been invited to meeting with the OECD prior to Christmas to discuss the issue further.

2. OECD Meeting on Pillar Two: Stakeholders' Input on the OECD Secretariat Proposals

A public consultation took place at the OECD in Paris on 9 December concerning the OECD Global Anti-Base Erosion Pillar 2 Proposal. Representatives from the OECD, the BEPS Inclusive Framework, academics, tax practitioners and advisers and representatives of business were in attendance. Ahead of the consultation, the OECD published the comments submitted by stakeholders to the Secretariat proposals.

CFE issued an Opinion Statement responding to the consultation setting out its view that there are too many variables in the GloBE proposal, with ramifications that could arise from the open policy and key design questions, calling for more certainty, simplicity and absence of double or multiple taxation. CFE's statement highlights a number of key elements that should be embedded as part of this process, namely that:

- The process needs to address the interaction of the four elements of Pillar Two, as it transpires that these are not intended to apply simultaneously, but no decision has been made as to which rule will take priority.
- The complexity of this proposal under Pillar Two confirms the need for a streamlined multilateral cooperation process; otherwise the system will become unworkable.
- The introduction of CFC rules are designed to achieve the same objective as the income inclusion rule. From CFE's perspective a simpler alternative to the income inclusion rule might be world-wide introduction of effective CFC rules.
- There are potentially a number of EU law points raised with the income inclusion rule which must be considered and resolved.
- The achievement of the policy aim to establish global minimum tax will depend significantly on the chosen model: jurisdiction-by-jurisdiction approach or an average global rate approach.
- Clarity would be welcome on the interaction between Pillar One and Pillar Two – CFE welcomes introduction of multilateral instruments where treaty benefits/ payments are being denied based on effective rate under Pillar Two, if the effective tax rate is based on a payment that is subsequently spread across multiple jurisdictions under Pillar One.
- As with Pillar One enhanced dispute prevention and resolution mechanisms will be essential, including multilateral mandatory binding arbitration.
- CFE is concerned that the use of financial accounts as a starting point for determining the tax base for the GloBE proposal would amount to more complexity.

Additionally, to evaluate the full effect of the existing BEPS standards, some of which are still under implementation in most countries of the Inclusive Framework, CFE in its Opinion Statement set out that a longer-term perspective seems more appropriate to appreciate the entirety of the remaining BEPS issues. 11

Those who were unable to attend can watch the consultation on OECD WebTV, via the OnDemand tab of the OECD platform.

Work at government representative level is ongoing, with the Secretariat proposal serving as a blueprint for further negotiations. The next Inclusive Framework meeting is scheduled for January 2020. However, the anticipated timeline for progress concerning the OECD proposals may be compromised by the recent position adopted by the US in its letter to the OECD on 3 December, suggesting the Pillar 1 proposals could apply as a safe-harbour.

3. Council of the EU Adopts Conclusions on Anti-Money Laundering Priorities

The Council of the EU on 5 December adopted conclusions setting out priorities for the EU's new anti-money laundering framework, seeking to guide the EU Commission in introducing harmonised EU anti-money laundering rules as well as enhanced anti-money laundering supervision across the EU, primarily addressed to the financial sector.

The Council in its recommendations urges Member States to transpose the AML legislation as soon as possible into national law. The conclusions also invite the Commission to explore further possible means of improving AML rules, such as further enhanced cooperation between authorities involved in anti-money laundering.

The conclusions can be viewed here.

4. VAT Committee Meeting Documents Published

The agenda and supporting documents concerning the most recent VAT Committee meeting have now been made available online.

At its 114th meeting, the VAT Committee reviewed recently adopted VAT provisions, questions concerning the application of EU VAT provisions, options exercised by Member States such as the temporary reverse charge mechanism, the centralised clearances for customs importation and recent judgments of the ECJ.

5. Council of EU Adopts Report on Defensive Administrative Measures for List of Non-Cooperative Tax Jurisdictions

The Council of the EU have adopted a report of the EU's Code of Conduct Group (Business Taxation), which sets out a detailed 6-monthly progress report on achievements of the Code of Conduct Group, and the status of jurisdictions that have been examined under the list.

Notably, the report details that the Code of Conduct Group reached agreement at its meeting on 14 November concerning guidance for Members States on defensive measures that can be taken in the tax field concerning non-cooperative jurisdictions.

The guidance sets out co-ordinated actions for Members States to take of a legislative nature, to encourage compliance with the Code of Conduct screening criteria as well as other international standards. Member States are recommended to apply at least one of the measures, which include non-deductibility of costs, CFC rules, withholding tax measures and denial of participation exemption on profit distribution.

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BRUSSELS I 16 DECEMBER 2019

1. ECOFIN Report to the European Council on Tax Issues

The Council of the EU has endorsed a report providing an overview of the tax policy work undertaken by Finland's Presidency of the EU. The report highlights the work undertaken and led by the Finish Council presidency of the EU, in particular regarding digital taxation, work in the Value Added Tax (VAT) package, the exchange of VAT-relevant payment information and simplification of SME VAT rules, as well as the EU list of non-cooperative jurisdictions for tax purposes. Concerning progress on the definitive VAT system, the report notes that Member States have requested a detailed technical evaluation, which will allow them to make the final policy choices. The report further indicates the progress towards climate-friendly EU energy taxation.

Regarding the developments at international level to address the taxation challenges of the digitalising economy, the EU took note of the ongoing work at OECD and set out the future steps to be taken by the European Union such as impact analysis, identifying the commonalities among EU member states due by the end of this year. In addition, the Commission will present its preliminary findings regarding the EU law compatibility of OECD-proposed solutions.

Croatia takes over the presidency of the European Union on 1 January 2020.

2. Tax Policy Key to New European Green Deal

The President of the European Commission Ursula von der Leyen presented her ambitious climate-change related policy proposal 'New Green Deal', under which every aspect of the EU economy will be revaluated to address the shortcomings of the European framework, which are compounded by the climate emergency. The European leaders endorsed the policy goal of making Europe a climate-neutral by 2050, with a dissenting opinion from Poland could not commit to this goal, as a result of which the EU leaders will revaluate the matter in June 2020.

As part of the proposed plan to deliver the Green Deal, instruments such industrial policy, infrastructure, transportation, agriculture, construction, taxation and social policy will be engaged.

On the taxation policy front, the EU intends to use tax reforms to absorb climate-policy related shocks aiming to facilitate a just transition to a greener economy, specifically by sending the right pricing signals and incentives to producers, users and consumers. In addition to revision of the Energy Taxation Directive (by qualified majority voting, if necessary), the European Green Deal relies on removing subsidies for fossil fuels and shifting the tax burden from labour to pollution. In order for Member states to be able to rely on targeted VAT rates to reflect the green ambitions, for example to support organic fruit and vegetables, a rapid adoption of Commission's proposal on VAT rates is encouraged.

The State aid guidelines concerning the environmental goals and energy will be revised by 2021 to facilitate a meaningful transition to climate neutrality by 2050, specifically by phasing out fossil fuels and encouraging clean energy sources.

3. Montenegro & Honduras Join Inclusive Framework on BEPS

In December, both Montenegro and Honduras became members of the OECD/G20 Inclusive Framework on BEPS, becoming the 136th and 137th countries to join, respectively. The OECD's Inclusive Framework of minimum standards was devised by the OECD and G20 countries as part of the 2015 Base Erosion Profit Shifting Plan (BEPS).

Joining the OECD Inclusive Framework also indicates compliance with conditions set by the European Commission concerning the EU's list of non-cooperative jurisdictions in taxation matters aimed at promoting tax good governance and minimising tax avoidance.

4. OECD Tax Statistics Indicate Revenue Plateau

In December, the OECD published the Revenue Statistics 2019 report. The report demonstrates that the average tax to GDP in the majority of the jurisdictions had not changed significantly from 2017 to 2018, but had decreased in 15 countries. The overhaul of the American corporate tax system led to a decrease from 26.8% in 2017 to 24.3% in 2018. Increases in tax revenues were observed in 19 countries.

The statistics from the report can be accessed via the OECD Global Revenue Statistic database, which provides detailed comparable taxation revenue information concerning jurisdictions.

5. Turkey Introduces Digital Tax

In December, new legislation passed by Turkey's Parliament was published in the country's official gazette, which introduces a digital services tax to apply to digital advertising, sales of digital content and online digital marketplaces.

The legislation will impose a 7.5% digital services tax on domestic Turkish digital sales for companies with a global turnover above 750 million Euros, and a national turnover above 20 million Turkish lira. The tax will apply from March 2020.

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BRUSSELS I 13 JANUARY 2020

Croatian Presidency Sets Out Policy Priorities

Croatia, who hold the Presidency of the Council of the European Union from 1 January 2020 to 30 June, have published documents setting out its Programme and Priorities for its Presidency period. It is Croatia’s first time holding the Presidency of the Council of the EU.

The programme focuses on four main concepts for Europe, namely: a Europe that develops, a Europe that connect, a Europe that protects and an influential Europe. In relation to specific taxation priorities, the Presidency Programme sets out Croatia’s aims that *“current international tax rules should be adapted to globalisation and digitalisation in order to ensure fair and just taxation where value is created. Additionally, the tax system should fight activities and introduce higher taxes on products whose adverse effects significantly contribute to climate change. A modern tax system should be based on transparent, efficient and sustainable taxation procedures that ensure legal certainty for all stakeholders.”*

Additionally, Croatia is committed to bolstering customs administration on the EU external borders, and initiating work on a “EU Single Window” for customs, to facilitate and simplify customs formalities, and to achieve its goal of fighting fraud and improving the safety of European citizens.

US & France Attempt to Reach Digital Tax Deal

The US and France are reportedly attempting to negotiate a means to resolve the trade dispute which has arisen following the recent publication of a report of the Office of the United States Trade Representative into the French digital services tax. The report recommends the imposition of tariffs on multiple French products imported into the US.

Following the French digital tax being signed into law on 24 July 2019, which imposes a 3% digital services tax on resident and non-resident companies with a global turnover above 750 million Euros, and a national turnover above 25 million Euros, US President Donald Trump tweeted that there would be “substantial reciprocal action” taken by the US concerning the digital tax.

French finance minister Bruno Le Maire stated that he and US Treasury Secretary, Steven Mnuchin had *“agreed to redouble the effort in the coming days to find a compromise on digital tax in the framework of the OECD”,* however also warned that France would react were the US to impose the threatened tariffs.

3. OECD Publish Country-by-Country Reporting Guidance

As a follow-up to BEPS Action 13, the OECD/G20 Inclusive Framework on BEPS has released additional interpretative guidance on the implementation and operation of Country-by-Country Reporting (CbCR).

The new guidance is intended to provide improved tax certainty for tax administrations and MNEs, and addresses automatic exchange concerning local filings of Country-by-Country reports.

4. European Economic & Social Committee Recommend Use of Tax Policy to Achieve Sustainable Development Goals

In December, the European Economic & Social Committee published an opinion concerning potential means of achieving Sustainable Development Goals by use of investment and taxation policy methods. Rapporteur for the opinion, Krister Andersson, noted that *"taxation policies determine the economic environment in which investment, employment and innovation in businesses take place and they provide governments with revenues for financing public spending. These policies are hence fundamental for achieving the Sustainable Developments Goals and they must be made fit for purpose."*

Notably, the opinion sets out the EESC's view that the use of tax policies concerning climate change would help achieve many sustainable development goals. The Committee further recommends that the EU join the Global Forum on Tax to engage more widely in debate concerning solutions for corporate taxation in the digital economy that can encourage growth and cross-border trade.

5. OECD Release Tax Administration Assessment Models

The OECD has made available two new assessment models for tax administrations, the Tax Debt Management Model and the Tax Compliance Burden Maturity Model.

Over 820 Billion Euro is outstanding in collectible debt between the 53 members of the Forum on Tax Administration. The Tax Debt Management Model has been designed to assist administrations assess performance and encourage positive reform. The Tax Compliance Burden Maturity Model aims to identify burdens which may discourage or prevent compliance and negatively impact tax morale. Jim Harra, First Permanent Secretary and Chief Executive of HM Revenue and Customs, who worked on developing the model noted that "*Understanding and addressing burdens is not straightforward and depends on a number of elements, including a solid strategy, a culture of minimising burdens and the confidence and expertise to engage with policy makers."*

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BRUSSELS I 20 JANUARY 2020

First ECOFIN Under Croatia's EU Presidency: Digital Tax and Financing the Green Deal

Croatia's Minister for Finance Zdravko Marić will tomorrow 21 January chair the first ECOFIN under the Croatian EU Presidency. Soon after, on Wednesday Mr. Marić will exchange views with the Members of the ECON Committee of the European Parliament on the priorities of the Presidency. Among other issues, two important topics are on the ECOFIN agenda: the tax challenges of the digitalising economy and financial aspects of the European Green Deal.

ECOFIN will discuss the deliberations of the OECD process on digital tax, in order to prepare for the next steps after the Inclusive Framework meeting on 29-30 January 2020. EU discussions will be focused on three action points:

- EU law compatibility of the OECD proposals;
- The European Commission impact assessment; and,
- Identifying commonly acceptable elements of the OECD proposals for the EU Member states.

It is also expected that the European Commission would present the economic and financial aspects of the European Green Deal, a package of measures aimed at enabling EU's transition towards climate neutrality. Concerning taxation implications, the Commission has proposed to tax non-recycled plastic-packaging waste as well as reform of the energy taxation framework by means of a carbon border tax. The EU Commission proposals are due in the course of 2021.

Croatia has set out general taxation-related priorities in the Programme and Priorities for its Presidency, stating that *"current international tax rules should be adapted to globalisation and digitalisation in order to ensure fair and just taxation where value is created. Additionally, the tax system should fight activities and introduce higher taxes on products whose adverse effects significantly contribute to climate change."*

Digital Tax: No Support for the US 'Safe Harbour' Approach

The US proposition to make Pillar One optional by allowing companies to 'opt out' of the newly proposed profit allocation rules continues to create tensions among governments and “will not fly politically”, the OECD Tax Director Pascal Saint- Amans said on Thursday. In addition, Martin Kreienbaum, the Chair of OECD’s Committee on Fiscal Affairs, who is also a Director General for International Taxation at the German Federal Ministry of Finance, stated that countries will not accept partial solutions, saying the “*Germany is willing to compromise on Pillar One only if there is a Pillar Two as well*”, which concerns the global anti-base erosion proposal and minimum tax.

At the World Economic Forum next week in Davos, Switzerland, US President Donald Trump is expected to discuss digital taxes with the EU Commission President Ursula von der Leyen, seeking to avoid retaliatory tariffs or trade barriers between the US and the EU. Neither the European Commission nor the White House have confirmed the meeting yet.

As CFE reported last week, following the French digital tax being signed into law on 24 July 2019, which imposes a 3% digital services tax on resident and non-resident companies with a global turnover above 750 million Euros, and a national turnover above 25 million Euros, US President Donald Trump tweeted that there would be “substantial reciprocal action” taken by the US concerning the digital tax.

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3. Apple’s CEO: Apple “Desperate” for Fair International Tax System

The CEO of Apple Tim Cook said that overhaul of international tax rules is overdue, hoping of success of the intergovernmental discussions at OECD level. *"It's very complex to know how to tax a multinational company. We desperately want it to be fair,"* the Apple CEO said after receiving an award from the IDA, the Irish government body for foreign direct investment.

Tim Cook also called for regulation of the tech companies, saying that "*it is probably strange for a business person to be talking about regulation but it has become apparent that (tech) companies will not self-police in this area. We were one of the first to endorse GDPR, we think it is overall extremely good, not only for Europe. We think it's necessary but not sufficient. You have to go further and that further is required to get privacy back to where it should be.*", Mr Cook said.

4. EU Presents Post-Brexit UK Trade Deal Position

The European Commission published an internal EU27 preparatory document that sets out the EU views on the future relationship with the United Kingdom, regarding the free trade agreement.

The presentation sets out that if the UK withdraws from EU on 31 January 2020 under the conditions of the Withdrawal Agreement, a transitional period of 11 months will follow, under which UK shall remain significantly aligned with the EU rules. Such a period should lead to a comprehensive free trade agreement (FTA), potentially leading to regulatory alignment.

The European Commission warns however, that one of the possible outcomes come 1 January 2021 is a '*cliff-edge*' scenario, under which at the end of the transition period, the UK and EU will trade on less than optimal WTO terms.

5.

EUROJUST: European Authorities Target Large-Scale VAT Fraud Scheme

In a coordinated action of the police and judicial authorities of a number of EU Member states, a large-scale VAT carousel scheme involving luxury cars was cracked down last week. The VAT carousel scheme involved purchase of luxury vehicles and other luxury products, which were immediately sold in France, but no VAT was paid at the purchase, therefore defrauding the French Tax Administration for an amount of over 12 million Euros.

Luxury cars as well as over 100,000 Euros in cash were seized from 33 premises in France, Romania, Bulgaria, the Czech Republic, Spain, Latvia, Germany, and Lithuania, the European Union Agency for Criminal Justice Cooperation (EUROJUST) stated.

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BRUSSELS I 27 JANUARY 2020

Solving the Digital Tax Conundrum: US and France Pave Way for OECD Agreement

Last week took us a step closer to solving the digital tax conundrum, following meetings between French, EU and US officials at the margins of the World Economic Forum elite gathering in Davos. Bruno Le Maire, Minister of Finance of France, and Steven Mnuchin, the US Treasury Secretary, alongside OECD Secretary-General Angel Gurria agreed to avoid a potential trade war following the introduction of the French Digital Services Tax. The US side agreed to suspend the imposition of tariffs on French goods whilst France agreed not to collect the digital tax until the end of 2020, subject to an OECD agreement by the end of year.

French president Macron confirmed the positive developments, whilst expecting that Paris and Washington will continue negotiations over the digital tax at the OECD until the end of the year. *"France is pursuing its objective of fair taxation on digital companies and finding a compromise within the framework of the OECD,"* the French president stated. The White House did not comment on the matter, but US Assistant Secretary of Treasury Chip Harter suggested that the US letter of last December insisting on Pillar One being a 'safe harbour regime' is still valid. According to media reports, Mr Harter said the United States position has not changed, but the wording on 'safe harbour' should not be understood as 'optional'.

On the other hand, the EU finance ministers could not agree on a unified EU position on the matter. At the last ECOFIN meeting Estonia, Poland and the Czech Republic were opposed to Pillar Two and the minimum tax regime, as presented by the OECD. The Czech Republic refused to agree to global minimum tax at all, citing tax sovereignty arguments. The Estonian position, on the other hand, was that genuine business activities with sufficient substance and taxable presence in a jurisdiction should be taxed according to the applicable tax legislation of that jurisdiction, without any other rules requiring them to 'top-up' the tax due up to the minimum rate, payable in a different jurisdiction. In absence of a substance carve-out, Estonia would reportedly not support Pillar Two, Bloomberg reports.

The EU is seeking to avoid a full-blown trade war with the US over digital taxes. To that end, Commission President Ursula von der Leyen met with US President Donald Trump in Davos. In addition, Croatia's Prime Minister Andrej Plenković, currently holding the EU Presidency, stated that the EU and the US are partners who need to find a common language on digital tax at the level of OECD, saying that (national) measures that lead to tariff retaliation from the US side are not helpful.

The latest update from the OECD on this very topic will be cast via the OECD Tax Talks webpage at 31 January 14:00 – 15:00 CET. Registration for the webcast is now open.

ATAF: Africa Has Right to Its Fair Share of Tax

Ahead of the Inclusive Framework meeting scheduled for 29 - 30 January, a meeting of the African Tax Administration Forum (ATAF) took place in Pretoria, for "*important discussions that will play a crucial role in determining how Africa responds to the global proposals to address the tax challenges from the digitalisation of the economy.*" ATAF members sought to agree a common position that will be presented on behalf of African countries in Paris, in particular by ensuring that "*new global tax rules will be fit for purpose in Africa and redress the current imbalance in taxing rights that disadvantage African countries*.", ATAF stated in a press-release.

EU Developments: Croatia's EU Presidency Update, EU Parliament US Senate Letter & EU- US Carbon Tax Differences

Croatia's Deputy Prime Minister and Minister of Finance, Zdravko Marić exchanged views with Members of the European Parliament's Committee on Economic and Monetary Affairs (ECON) on 22 January, setting out the Presidency plans on taxation related files, including taxation of the digital economy. In addition, Mr Marić elaborated on the approach to be taken on strengthening EU's anti-money laundering rules.

Further progress on some tax files is expected later in this year, when both Croatia's presidency and the European Commission will present their detailed strategy. The European Commission, DG TAXUD, for its part is expected to deliver an action plan on 25 March.

In other EU developments this past week, 135 Members of the European Parliament (MEPs) have written a letter to US Senate Finance Committee concerning the international negotiations on BEPS and the digital services tax. The MEPs seek support from the US Senators for fair taxation of the digitalising economy, by joining forces and putting pressure on their respective governments to adopt a positive stance at the OECD negotiations and stand against retaliatory tariffs or taxes.

According to media reports, the split between the EU and the US on climate policy appears to be widening. The new battlefield could be the European Green Deal and the carbon taxation measures, such as taxing carbon imports by the EU. US Commerce Secretary, Wilbur Ross told the FT that carbon taxation measures taken by the EU that could be seen as protectionist like the digital taxes, will inevitably face US retaliation.

EU & UK Sign Withdrawal Agreement – EU Asks Countries to Treat UK as EU Member State

On 24 January, the President of the European Council, Charles Michel and the President of the European Commission, Ursula von der Leyen signed the United Kingdom's Withdrawal Agreement, which formalises the UK's exit from the EU at midnight Central European Time on 31 January. Having received royal assent in the UK, the next stage involves European Parliament ratification on 29 January.

As of 1 February, the UK will cease to be a member state of the European Union, but the EU law will continue to apply to the UK at least until the end of the transition period – 31

December 2020 and the UK will be under jurisdiction of the European Court of Justice. Trade agreements can be negotiated by the UK with third countries during the transition period. A comprehensive free trade agreement will also be negotiated by the EU and the UK.

The Financial Times reported today that the European Commission will send a *note verbale* to 160 countries, a form of diplomatic correspondence, asking them to treat the United Kingdom exceptionally as a member state of the European Union until 31 December 2020, even though it will have left on 31 January 2020. The EU *note verbale* is intended to help the UK navigate through the uncertainty of the post-Brexit transition period.

5. Reminder: Applications Open for the CFE *Albert J. Rädler* Medal Award

CFE Tax Advisers Europe, in cooperation with IBFD, reminds all tax students at Master's level, as well as their supervisors, that the CFE receives applications from eligible tax students for the *Albert J. Rädler* Medal Award until **20 February 2020**. The award is intended to encourage academic excellence among young tax students. The Medal will be awarded at the CFE Forum, our flagship international tax conference on 2 April in Brussels.

The CFE will take care of travel and accommodation arrangements for the successful candidate to attend the CFE Forum. In addition, there is a monetary prize courtesy of the Rädler family and complimentary academic literature from our publishing partner IBFD. Applications are welcome at info@taxadviserseurope.org. More details are available on the CFE website.

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BRUSSELS I 3 FEBRUARY 2020

OECD Inclusive Framework Renew Commitment to Finding Digital Tax Solution

On 31 January, the OECD Inclusive Framework published a Statement and held a Tax Talks Webcast concerning progress on its two-pillar approach to address the taxation challenges of the digital economy. In the statement, the Inclusive Framework reaffirms its commitment to reach a solution by the end of 2020, endorsing and agreeing the outline of the Unified Approach Under Pillar 1 to create new taxing rights for market jurisdictions as the basis for future negotiations, and acknowledging progress made to date in respect of Pillar 2.

The Inclusive Framework notes significant divergence of views within the group concerning binding dispute resolution, whether to weight quantum created by new taxing rights to account for different degrees of digitalisation in Member States and whether to allow for regional factors when calculating amounts under the new taxing rights.

As concerns the scope of the Proposals, the Statement sets out that new taxing rights created under the present Pillar 1 proposal are intended to apply to companies providing automated digital services, such as search engines, social media platforms, streaming services, online marketplaces, online gaming, cloud computer and online advertising, as well as to consumer facing businesses generating revenue from sales of goods and services, including third-party resellers, intermediate suppliers and businesses generating revenue from licensing rights.

The Framework in its statement refers to the US letter issued last December suggesting Pillar One could apply as a 'safe harbour regime', and notes that whilst many jurisdictions have expressed concerns that this would undermine the policy objectives of the process, a decision on whether or not Pillar One could operate as a safe harbour would only be made once the technical aspects of the proposal were agreed.

The Statement sets out a new Programme of Work, whereby the key policy features of the Pillar 1 proposal are to be agreed by the Steering Group in July 2020, following completion of various work topics in June 2020, and a final report to be issued by the end of 2020.

UK Enters Transitional Period with the EU

The United Kingdom's Withdrawal Agreement, which formalises the UK's exit from the EU, entered into force at midnight Central European Time on 31 January 2020. The UK is as such no longer a member state of the European Union, but EU law will continue to apply in the UK at least until the end of the transition period – 31 December 2020, and the Court of Justice will continue to have jurisdiction over any claim brought by or involving the UK until the end of the transition period.

The Court of Justice has issued a press release concerning the UK's withdrawal from the EU, as has the European Parliament. Additionally, the EU Commission, Council and Parliament Presidents issued an op-ed concerning the withdrawal of the UK from the EU, as well as a Q&A document concerning the transition period arrangements. A comprehensive trade agreement will now be negotiated by the UK with the EU during the transition period.

Commission Issues Letters of Formal Notice on DAC6 & ATAD Implementation

The Commission has issued letters of formal notice to various Member States in relation to implementation of the DAC6 mandatory disclosure rules, as well as the ATAD Directives.

Belgium, Cyprus, Czech Republic, Estonia, France, Greece, Italy, Latvia, Luxembourg, Poland, Portugal, Romania, Spain, Sweden and the United Kingdom were issued letters of formal notice concerning implementation of DAC6. Germany, Greece, Latvia, Portugal, Romania, and Spain were issued with letters of formal notice concerning the implementation of ATAD1, whilst Cyprus, Germany, Greece, Latvia, Poland, Romania, and Spain were issued with letters concerning the implementation of ATAD2 with respect to hybrid mismatches with third countries. In addition, Belgium was issued with a letter of formal notice concerning implementation of the tax dispute resolution directive.

The countries must now respond to the letters. Should the Commission not be satisfied with the responses, it will then send a reasoned opinion requiring the Member State to comply with the EU law within two months.

North Macedonia Becomes Signatory to BEPS MLI Convention

On 29 January, North Macedonia became the 94th jurisdiction to be a signatory to 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. It now extends to over 1,650 bilateral tax treaties.

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BRUSSELS I 10 FEBRUARY 2020

1. Code of Conduct Programme - Croatia's EU Presidency

Croatia's Presidency of the Council of the European Union set out the work programme for the Code of Conduct Group (Business Taxation) concerning the first semester of 2020. Notably, the EU 'blacklist' of non cooperative jurisdictions for tax purposes is due to be revisited at the 18 February ECOFIN Council meeting. Under the working programme, it is intended that the Code of Conduct group discuss a common EU position on exchange of beneficial ownership information, finalise discussions on the Foreign Source Income Exemption regimes falling within scope of the EU blacklisting process and revisit economic substance requirements by reviewing country treatment of partnerships. In order to compile a Code of Conduct Group Report before the end of Croatia's EU Presidency, the following meetings have already been scheduled: 2 March, 1 April and 3 June 2020.

2. OECD Opens Consultation on Country by Country Reporting

The OECD has published a consultation document inviting input concerning Action 13 of the Base Erosion and Profit Shifting Project, on Country-by-Country Reporting. The review is being carried out pursuant to the BEPS Action Plan, which mandated a review of CbCR under Action 13 in 2020.

The consultation document invites input on whether modifications should be implemented for Action 13 such that additional or different data should be reported, requesting practical experiences and issues with reporting requirements under Action 13, input on the use of the reported data by tax administrations, and on the effectiveness and appropriateness of thresholds and reporting.

The consultation will be open until 6 March 2020. Comments should be submitted in Word format to taxpublicconsultation@oecd.org.

3. DG TAXUD Public Consultation on Review of DAC

The European Commission, DG TAXUD has initiated an inception impact assessment looking into possibilities to strengthen the existing EU framework of exchange of information for tax purposes ("DAC"). The main issue that drives this Commission's initiative for review of the DAC framework is the inability of tax administrations across the EU to obtain tax-related information on taxpayers who do business via the digital platform economy. According to the European Commission: "Member States' tax administrations have little information to correctly assess and control gross income (revenues) earned in their country via activities (such as renting a property via a web platform or giving a ride to a person who needs a lift and/or other cases) made via the intermediation of some digital platform which basically matches demand and supply. This is especially the case when the income or the taxable amount passes via platforms established elsewhere."

Similarly, the OECD report of March 2019 "The Sharing and Gig Economy: Effective Taxation of Platform Sellers" looks at the approaches for taxation of income from the sale of goods or services in the sharing and gig economy, highlighting the tax challenges faced by revenue administrations in relation to emerging business models. The public consultation period runs until 6 April 2020.

4. EU Commission Publishes 2020 Tax Policy Report

The Commission's DG TAXUD has published the 2020 EU tax policy survey report, examining Member States' tax systems. The Commission in the report highlights that over the coming years, work must be done at EU and international level to "reform the international corporate tax system", as well as "intensify the fight against tax abuse", calling for a coordinated approach to tackling tax avoidance.

The report contains a detailed analysis of Member States' tax systems and their performances, as well as tax reforms in the EU and in Member States, and an evaluation of the Commission's taxation policy agenda and actions taken between 2014 and 2019, and the impact of the agenda.

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BRUSSELS I 17 FEBRUARY 2020

1. OECD Release Digital Tax Economic Analysis

In a webcast streamed on 13 February 2020, the OECD released details of an economic analysis and impact assessment concerning the Pillar 1 and Pillar 2 proposals for taxation of the digital economy being negotiated by the Inclusive Framework on BEPS.

The preliminary findings of the analysis being undertaken through the work of the Framework indicate that the combined effect of the Pillar 1 and 2 proposals would lead to an increase of around 4% in global corporate income taxation revenue for both low, middle and high-income economies.

The analysis shows that Pillar 1 would lead to only relatively small increases in taxation, but would achieve a redistribution of taxation rights to market jurisdictions, meaning low and middle-income economies would experience a higher rate of increase in taxation under Pillar 1 than high-income economies. All countries would experience an increase in corporate income taxation under Pillar 2, and MNEs would see an increase in effective taxation rates, with the reduced dispersion in effective tax rates likely to reduce incentives for profit-shifting.

The webcast concerning the preliminary findings of the impact assessment can be viewed here.

2. EU Commission Publishes Anti-Money Laundering Roadmap

The European Commission has published a Roadmap concerning future anticipated steps in its "new comprehensive approach to preventing and combating money laundering and terrorism financing".

The Commission states in the Roadmap that the *"package adopted by the Commission in July 2019 highlighted a number of deficiencies in the implementation of the EU anti-money laundering framework"* and that *"even full implementation of the latest anti-money laundering provisions introduced by the 5th AML Directive…would not remedy the current weaknesses"*.

According to the European Commission: "more harmon*isation at EU level, and possibly central EU mechanisms/bodies to strengthen the preventive framework in light of the cross-border nature of much money laundering in the EU and of the integration of the internal market."* are needed.

The Roadmap sets out that a policy communication will be issued in the coming months setting out the areas where further EU action will be taken, which will form the basis of future proposals of the Commission. Extensive consultation with stakeholders will also take place in 2020, with a view to present new policy initiatives in early 2021. Feedback can be submitted on the current Roadmap until 11 March.

3. Proposal for DAC Directive Codification Published

The European Commission has published a proposal for the codification of Directive 2011/16/EU of 15 February 2011 on administration cooperation in the field of taxation ("DAC") with the aim of "simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens".

The codification will not modify the content of the acts, but will merely consolidate them whilst making only necessary amendments for the purposes of codification. As such, the accelerated legislative procedure is able to be used, for the fast-track adoption of codified instruments.

4. OECD Release Transfer Pricing Guidance on Financial Transactions

The OECD has released Transfer Pricing Guidance on Financial Transactions, further to follow-ups in BEPS Action 4 and Actions 8 - 10. It is the first time the OECD's transfer pricing guidance has included guidance on the transfer pricing aspects of financial transactions. The guidance aims to improve consistency in interpreting the arm's length principle and reducing double taxation and disputes.

5. February EU Infringement Package Published

The European Commission has published its February infringement package setting out the legal action being pursued against various Member States by the Commission for non-compliance with obligations under EU law.

Letters of formal notice were sent to Cyprus, Hungary, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Spain for failing to implement the 5th Anti-Money Laundering Directive. The countries will have two months to notify the Commission that the Directive has been implemented, or will thereafter be issued with reasoned decisions.

Germany was issued with a letter of formal notice for failing to have in place proper IT systems for the implementation of the VAT quick fixes package, which entered into force on 1 January 2020. Germany has indicated it will only have the necessary IT infrastructure in place by the end of 2021. Germany will have two months to respond, before being issued with a reasoned decision.

The Commission has also referred Portugal to the Court of Justice for failing to amend legislation concerning the rate of tax levied for registration of second-hand imported vehicles, issued a letter of formal notice to Malta for failing to levy the correct rate of VAT on sales of yachts and to Latvia for taxing more highly cars registered in other Member States by Latvian tax residents.

BRUSSELS I 24 FEBRUARY 2020

1. EU Developments: Parliamentary Week & Article 116 TFEU to Bypass Unanimity in Tax at EU Level

Speaking at the European Parliamentary Week 2020 on 18 February 2020 in Brussels, organised by the European Parliament in cooperation with the Croatian Presidency of the EU, the EU Commissioner Paolo Gentiloni and the Director of the OECD Centre for Tax Policy and Administration Pascal Saint-Amans agreed that they would prefer a common global solution on the taxation of the digital economy as a Plan A outcome.

Commissioner Gentiloni, for the Commission's part, confirmed that it will be more beneficial for governments and businesses to work with an agreed set of rules rather than a plethora of unilateral and uncoordinated measures. On the other hand, Commissioner Gentiloni expressed concern about the insistence of the United States on the optionality of Pillar One. "*Safe harbour cannot be understood differently to optionality, and this is not the right approach to taxation. The EU Commission must in the alternative go on with its own proposal by the end of the year, it is a political commitment made by President von der Leyen, but we are now concentrated only on Plan A which is at the OECD level.*", Commissioner Gentiloni said.

Separately, speaking at an event in Brussels, the newly appointed Director for Direct Taxation and Tax Coordination in the European Commission Benjamin Angel indicated that the Commission is considering using the powers of Article 116 of the Treaty of the Functioning of the European Union to bypass the unanimity requirement to decision making in taxation. Under this provision, the European Parliament and the Council can issue directives in areas which cause distortions of the Single Market in accordance with the ordinary legislative procedure. In practice, if the Commission proposes use of this procedure, it will require qualified majority from the outset to adopt directives in the taxation area, should distortions of the Single Market be established as a reason.

2. G20 Communiqué: Overcome Remaining Differences for Further Progress

No significant progress was made at this weekend's G20 meeting in Riyadh, as concerns the taxation challenges of the digitalisation of the economy. Reportedly, there were tensions between the US Secretary of Treasury and his European counterparts, with European Commission officials tweeting that the US was not engaging and Secretary Mnuchin had left the room without taking the floor.

The official Communique of the G20 states that the leaders encourage further progress on both Pillars to overcome remaining differences and reaffirm their commitment to reach a consensus-based solution with a final report to be delivered by the end of 2020. The next meeting of the Inclusive Framework is scheduled for this summer in Berlin.

3. VAT: Simplified Rules for Small Businesses & Cross-Border Tax Fraud

The Council of the European Union (ECOFIN) adopted two proposals concerning simplification of VAT rules for small business and prevention of tax fraud in cross-border e-commerce. Under these measures amending Directive 2006/112/EC, small companies will be able to qualify for simplified VAT compliance rules, where their annual turnover remains below a threshold set by a Member State (lower than €85,000). Subject to certain conditions, small businesses from other EU Member States, which do not exceed this threshold, will also be able to benefit from the simplified scheme if their annual EU turnover does not exceed €100,000.

The second set of rules aims to facilitate detection of tax fraud in cross-border e-commerce transactions and harmonised collection by Member States of records made available electronically by payment service providers. In addition, a new central electronic system will be set up for the storage of the payment information and for the further processing of this information by national tax authorities. The new measures will apply as of 1 January 2024.

4. EU Revises 'Blacklist' of Non-Cooperative Jurisdictions

The EU has revised its blacklist of jurisdictions considered non-compliant for tax purposes. On 18 February's ECOFIN Council meeting, ministers agreed to add Cayman Islands, Palau, Panama and Seychelles to the EU's blacklist. 16 jurisdictions (Antigua and Barbuda, Armenia, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cabo Verde, Cook Islands, Curaçao, Marshall Islands, Montenegro, Nauru, Niue, Saint Kitts and Nevis, Vietnam) reportedly implemented the required reforms to comply with EU's tax good governance criteria and were removed from Annex II.

Commenting on behalf of the EU Presidency, Croatia's Finance Minister Zdravko Marić said of the developments: "*The work on the list of non-cooperative tax jurisdictions is based on a thorough process of assessment, monitoring and dialogue with about 70 third country jurisdictions. Since we started this exercise, 49 countries have implemented the necessary tax reforms to comply with the EU's criteria. This is an undeniable success. But it is also work in progress and a dynamic process where our methodology and criteria are constantly reviewed.*"

5. European Semester Recommendations Endorsed by Council

The Council of EU has endorsed the European Semester recommendations on the economic policy in the EU. The recommendations are of particular concern for the Euro area and are expected to be adopted by the European Council (heads of states and governments) in March.

The Recommendations call for better coordination of fiscal policies, in particular by addressing efforts in simplifying and modernising the tax systems. The report calls to address tax fraud, evasion, and avoidance, through measures against Aggressive Tax Planning, taking account of the on-going discussions at the OECD Inclusive Framework on the remaining BEPS issues, in order to make tax systems more efficient and fairer.

"The ease with which mobile resources can move within the euro area is one of the foundations of the internal market but also increases the scope for tax competition. Coordination among Member States is therefore essential to address profit-shifting and harmful tax practices and avoid an overall race to the bottom in terms of corporate taxation. Working towards an agreement for a Common Consolidated Corporate Tax Base as well as an agreement on the OECD Inclusive framework on the remaining BEPS issues to review profit allocation among countries and ensure minimum effective taxation could be instrumental in this endeavour."

The Recommendations conclude that Member States should better coordinate to improve the effectiveness of national fiscal frameworks and adopt growth-friendly tax measures that foster a sustainable economy. Finally, Member states are encouraged to support and implement EU actions to combat Aggressive Tax Planning in order to avoid a race to the bottom in corporate taxation.

The selection of the remitted material has been prepared by
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BRUSSELS I 2 MARCH 2020

Vestager: Member States' Digital Taxes Not State Aid

The Executive Vice-President of the European Commission Margrethe Vestager said the European Commission is strongly supportive of actions taken by some EU Member states to impose unilateral digital services tax in absence of a collective action. *"I strongly applaud that Member states are picking it up where we failed as a community together to do something. It is very important in order to be able to answer the many businesses who pay their taxes, that you're willing to do something to make sure that your competitors, they pay as well,"* Vestager said in a Bloomberg interview.

Vestager admits however that a global solution at OECD level is preferable to a regional one, echoing statements made by the EU Economy Commissioner Paolo Gentiloni at the European Parliament. Both Vestager and Gentiloni thus agree that the EU's preferred outcome would be an agreed set of rules, to the benefit of governments and businesses alike. The main concern of the European Commission is that talks at OECD level might fail due to the US persistence on Pillar One being optional for companies within scope.

In addition, Vestager confirmed that nationally imposed digital taxes do not fall short of the EU State aid rules, as argued by some commentators, adding that the European Commission would not support measures that contravene EU law.

In relation to the State aid investigations into tax rulings (e.g. advance pricing agreements - APAs), Vestager said that the Commission has been successful in addressing preferential treatment offered to some companies by way of administrative tax rulings, but the Commission does not intend to stop its fiscal State aid investigations. "*We have seen a number of changes on ground. We've seen that in Luxembourg. They have changed the way they do tax rulings. Same in the Netherlands. The Commission has no plans to halt its efforts chasing individual tax rulings,* Vestager said.

European Semester Reports: Overview of Key Socio-Economic Parameters

The European Commission has published the European Semester country reports, evaluating the main economic challenges and opportunities for Member states. The country reports for this year focus in particular on Member States' adherence to the Sustainable Development Goals (SDGs), as well as challenges related to the climate and energy transition.

Commenting the EU Economy Commissioner Paolo Gentiloni said of the reports: *"Today, we are taking the first step towards putting sustainability at the heart of EU economic policy and action. The 2020 country reports track progress towards the UN's Sustainable Development Goals and include a dedicated section on environmental sustainability. This goes hand in hand with the European Semester's focus on economic and social issues and the correction of macroeconomic imbalances. The reduction of public and private debt levels is proceeding at an uneven pace – and while current account deficits have for the most part been corrected, large surpluses remain a concern."*

Individual country reports address Member states' shortcomings on taxation-related policy recommendations, as well as enforcement of the EU Anti-Money laundering rules. For instance, the EU Commission summary factsheet highlights the following issues:

- With respect to Ireland, the Commission noted some progress in addressing shortcomings of the tax system that may facilitate aggressive tax planning, in particular on outbound payments;
- Italy was praised for fighting tax evasion by strengthening the compulsory use of e-payments, including through lower thresholds for cash payments;
- Lithuania made some progress on improved tax compliance;
- Austria made progress in shifting tax base away from labour to other sources;
- Sweden was criticized for the absence of action on limiting mortgage interest tax deductibility or increasing recurrent property taxes;
- Spain made no progress in strengthening the robustness of its fiscal framework; and,
- Estonia did not make sufficient progress to ensure effective supervision and enforcement of the EU anti-money laundering framework.

As a next step, the Commission will present the report to the European Parliament and the Council will assess the country reports.

3. ECJ Revisits 'Final Losses' Doctrine in Case C-405/18 *AURES*

The Court of Justice revisited its 'final losses' doctrine in the *Case C-405/18 Aures*, by establishing that Member states are not required to take into account losses accrued by a taxpayer in its former jurisdiction of tax residency. By such conclusion, the Court upheld its *National Grid Indus* (C-371/10) conclusions, explaining that the freedom of establishment does not oblige Member State of transferred residence to take into account losses realised in another Member State, which definitely fall outside the scope of its taxing jurisdiction.

The situation of Aures Holding was different to the one in *Case C-650/16 Bevola*, as the State of residence did not have tax jurisdiction over losses accrued while the company was under tax jurisdiction of another EU Member state.

Accordingly, the Court concludes, resident companies with losses in one Member State, and companies which transferred their tax residence to that Member State and had incurred a loss in another Member State in respect of a tax year during which they were tax residents in the latter Member State, are not in a comparable situation in the light of the objectives of preserving the allocation of the power to impose taxes between the Member States and preventing the double deduction of losses (para 53).

CFE Tax Advisers Europe published an Opinion Statement on the Court of Justice decision of 12 June 2018, in Case C-650/16 Bevola, concerning the utilisation of "final losses" attributable to a foreign permanent establishment and the viability of the *Marks & Spencer* "definitive losses" doctrine.

4. OECD Publishes Dispute Resolution Reports

The OECD has released the latest edition of dispute resolution peer review reports (BEPS Action 14) for Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia. The reports assess each country's efforts to implement the BEPS Action 14 minimum standard, containing approximately 135 targeted recommendations that will be followed up in Stage 2 of the peer review process.

5. Taxpayers' Rights: Launch of the 2019 General Report – 13 May 2020 – Amsterdam

CFE Tax Advisers Europe, in cooperation with IBFD and de Nederlandse Orde van Belastingadviseurs (NOB), a CFE Member Organisation from the Netherlands, is pleased to announce that the launch of the 2019 General Report on the Observatory on the Protection of Taxpayers' Rights will take place on Wednesday 13 May 2020 in Amsterdam, the Netherlands.

On 13 May, Professor Pasquale Pistone will present the 2019 Annual Observatory on the Protection of Taxpayers' Rights Report. The conference will welcome tax experts and academics who will discuss the main findings of the Observatory on the Protection of Taxpayers' Rights Report, the impact of technology on taxpayers' rights and the implications of the Report for the Netherlands. Panellists include:

- Fabiola Annacondia, IBFD
- Professor Philip Baker QC, Oxford University & Field Court Tax Chambers
- Dick Barmentlo, FT-Advocaten
- Iñaki Bilbao Estrada, CEU Cardenal Herrrera
- Arjo van Eijsden, NOB and EY
- Anke Feenstra, Hertoghs Advocaten
- Henk Koller, NOB
- Nina E. Olson, Center for Taxpayer Rights
- Professor Dennis Weber, University of Amsterdam
- Stef van Weeghel, PwC
- Carlos Weffe, IBFD
- Ian Young, CFE

Registrations for this event are now open. Participants who register via this link by 31 March 2020 will benefit from an early bird price.

The selection of the remitted material has been prepared by
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BRUSSELS I 9 MARCH 2020

1. EU Commission Publishes Tax Evasion & Tax Simplification Roadmap

The European Commission has published a Roadmap concerning its Action Plan to fight tax evasion and simplify taxation, as well as for its external strategy for tax good governance. The Roadmap indicates that following a conference on the tax challenges in the digital era, scheduled to take place in April 2020, public consultations will take place concerning follow-up actions.

The Roadmap lists the following as steps to be taken concerning tax evasion: strengthening cooperation tools amongst tax administrations at Union level; introducing new digital solutions to move to real time sharing of information and improve data analytics; for tax data to be provided directly to tax authorities from digital platforms (concerning which a legislative proposal is specifically foreshadowed); and improved cross-border recovery and cooperation agreements.

In relation to simplifying taxation, the Roadmap details that the following actions may be taken: the introduction/improvement of mechanisms concerning cross-border tax disputes, the simplification and modernisation of VAT rules and procedures for withholding taxes in investment in the Single Market; the improvement of cooperative compliance; the introduction of IT solutions to levy tax in real time; and the reinforcement of the EU position with third countries, particularly by way of the external strategy for tax good governance, which may include defensive measures being introduced, technical assistance being offered or agreements being made with third countries.

The Commission will publish the Action Plan together with its initial legislative proposals in June 2020.

2. Turnover Taxes Not Discriminatory: ECJ Decisions in *Tesco* & *Vodafone*

On 3 March 2020, the European Court of Justice delivered its judgments in Cases C-323/18, *Tesco-Global Áruházak Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli* and C75/18, Vodafone Magyarország Mobil Távközlési Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, two Hungarian cases concerning whether or not steeply progressive turnover taxes which targeted the retail and telecommunication sectors were discriminatory or contrary to the freedom of establishment.

The Court in both cases held that *"Articles 49 and 54 TFEU must be interpreted as not precluding the legislation of a Member State that establishes a steeply progressive tax on* *turnover, the actual burden of which is mainly borne by undertakings controlled directly or indirectly by nationals of other Member States or by companies that have their registered office in another Member State, due to the fact that those undertakings achieve the highest turnover in the market concerned."*

Notably, the Court held in *Vodafone*, at paragraph 52, that *"The fact that the greater part of such a special tax is borne by taxable persons owned by natural persons or legal persons of other Member States cannot be such as to merit, by itself, categorisation as discrimination".*

The Commission has issued a statement concerning the judgments, stating: *"The Commission takes note of the ECJ's preliminary rulings concerning the compatibility of the sectoral taxes levied in Hungary on the turnover of retail and telecommunications operators and undertakings with EU free movement rules. The Commission also takes note of the clarifications provided by the ECJ as to the admissibility of State aid questions in cases where taxpayers invoke the unlawfulness of taxes under State aid rules to avoid paying these taxes. The Commission will carefully examine the judgments."*

3. EU Green Deal - Energy Taxation & Carbon Border Adjustment Inception Impact Assessments

The EU Commission has published two inception impact assessments on the Energy Taxation Directive and Carbon Border Adjustment Mechanism as part of its work to progress the EU Green Deal.

As concerns the Energy Taxation Directive, the inception impact assessment sets out that a legislative proposal is planned for June 2021, which will aim to align the *"taxation of energy products and electricity with EU energy and climate policies"* and to update *"the scope and structure of rates as well as …use of optional tax exemptions and reductions by Member States".* An impact assessment concerning the proposal is being prepared, and an online public consultation concerning changes to the Directive will be carried out in Spring 2020.

A public consultation will also be carried out concerning the Carbon Border Adjustment Mechanism, which will aim to prevent carbon leakage caused by offshore production and carbon intensive imports, to ensure import prices reflect their carbon footprint, in order to achieve EU climate goals. In addition, technical consultations with specialised stakeholders and an impact assessment will be carried out by the Commission.

4. Advertisement Tax Declaration Requirements not Contrary to EU Law: ECJ Judgment in *Google Ireland v Hungarian Tax Administration*

On 3 March 2020, the Grand Chamber issued its judgment (based on a reference for a preliminary ruling per Article 267 TFEU) in Case C-482/18 *Google Ireland v Hungarian Tax Administration* related to the Hungarian advertisement tax.

Essentially, the Court follows AG Kokott's Opinion and declares that the obligation to submit a tax declaration imposed on non-resident companies for the purposes of Hungarian advertisement tax on turnover does not constitute a restriction on the freedom of establishment, i.e. Article 56 TFEU, in spite of the fact that Hungarian companies do not have such an obligation by law. The Court was not asked to rule on the legality of the turnover advertisement tax as such, but the Court notes however that *"it must be borne in mind that Article 56 TFEU precludes the application of any national rules which have the effect of making the provision of services between Member States more difficult than the provision of services purely within a Member State."* (*Austria v Germany*, C-591/17, para 135).

The Hungarian system of imposition of fines, however, was found to be in breach of Article 56 TFEU. In essence, the Hungarian law imposes fines on non-resident taxpayers within scope of the advertising tax, which increase incrementally for failure to register as a taxpayer liable for the tax and for failure to submit a tax return on time. This practice was found to be a restriction on the cross-border provision of services, which disproportionally affects foreign companies.

The Court ordinarily accepts that such a restriction of the fundamental freedoms might be justified by overriding reasons of public interests, such as the need to preserve the integrity of its tax regime, ensuring the effectiveness of fiscal supervision and the effective collection of tax, all of which were invoked by the Hungarian government. The Court did not accept such justifications in the present case on grounds of proportionality (para 49 of the judgment). The Court supported its decision citing factors such as disproportionality of the penalty in relation to the actual turnover of the company and discretion of the tax authority in relation to subsequent decreasing of the fine, all of which were found to be contrary to the freedom of establishment.

5.

Portugal Ratifies OECD BEPS MLI

Portugal has deposited its instrument of ratification to 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. It now extends to over 1,650 bilateral tax treaties.

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BRUSSELS I 16 MARCH 2020

1. EU Commission Publishes EU Coordinated Response to Coronavirus Outbreak

The European Commission has published a Communication setting out a coordinated economic response of the European Commission to the COVID-19 outbreak.

To minimise economic impact of the COVID-19 outbreak, the EU through its coordinated response will work with Member States to establish means to compensate sectors for losses incurred, to ensure SMEs are provided with liquidity urgently needed, to establish funds to be made available to counter the effects of the virus on employment, and have encouraged Member States to make full use of State Aid provisions to support national support measures, as Denmark has done concerning the cancellation of large events with more than 1,000 participants.

In a speech concerning the measures, Executive Vice-President Margrethe Vestager encouraged Member States to *"give all businesses, throughout the economy, a breathing space to help them cope - providing wage subsidies, or suspending corporate tax payments or payments of VAT."*

EU Parliament President David Sassolli reinforced the measures to be taken by the EU, stating, *"EU countries are authorized to spend everything that is necessary to guarantee support for employees, self-employed workers, businesses, and banks…It is important to emphasize that governments will be able to use all the flexibility provided for in the Stability and Growth Pact, and that state aid will be allowed for sectors and businesses affected by the crisis."*

2. OECD Publishes Responses to CbCR Consultation

The OECD has now published comments received in relation to a consultation document published in February inviting input concerning Action 13 of the Base Erosion and Profit Shifting Project, on Country-by-Country Reporting. The review is being carried out pursuant to the BEPS Action Plan, which mandated a review of CbCR under Action 13 in 2020.

The consultation document invited input on whether modifications should be implemented for Action 13 such that additional or different data should be reported, requesting practical experiences and issues with reporting requirements under Action 13, input on the use of the reported data by tax administrations, and on the effectiveness and appropriateness of thresholds and reporting.

UK to Proceed with Digital Tax

The UK budget delivered last week confirmed that the UK is proceeding with plans to introduce a digital services tax, which will enter into force in April 2020, notwithstanding US President Trump's administration reportedly having advised the UK government at multiple levels that no free trade deal will be agreed should the tax be passed into law.

The tax will apply to businesses making search engines, social media platforms or online marketplaces available to UK users, including any associated online advertising of that business, which have a global annual turnover over £500 million pounds and over £25 million pounds of turnover attributable to revenue derived from UK users. The tax will apply at a rate of 2% to revenue over £25 million pounds.

This follows Executive Vice-President of the European Commission, Margrethe Vestager, having confirmed that nationally imposed digital taxes do not fall short of the EU State aid rules, as argued by some commentators, and the decisions of the European Court of Justice in Cases C-323/18, *Tesco-Global Áruházak Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli* and C75/18, Vodafone Magyarország Mobil Távközlési Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, in which it was held that steeply progressive turnover taxes which targeted the retail and telecommunication sectors, and largely affected nationals of other Member States or by companies that have their registered office in another Member State, were not discriminatory.

EU Publishes Industrial Policy Package

On 10 March 2020, the EU Commission presented its Industrial Strategy, which aims to advance EU competitiveness through the implementation of a range of measures, notably including:

- A review of competition rules and State aid guidelines;
- An EU single market strategy;
- A White Paper concerning distortive effects by foreign subsidies;
- Measures to decarbonise energy-intensive industries, improve carbon leakage tools and the supply of low-carbon energy at competitive prices.
- A Circular Economy Action Plan; and
- A new SME strategy.

The package notes that there exists a *"broad range of obstacles in the single market…the root causes of such barriers: restrictive and complex national rules, limited administrative capacities, imperfect transposition of EU rules and their inadequate enforcement".*

The strategy will involve improving the harmonisation of the implementation of EU rules, establish a Single Market Enforcement Taskforce to strengthen the enforcement of single market rules, improving tools such as the SOLVIT dispute resolution tool, as well as improving the oversight capabilities of national authorities.

In Memoriam: Former CFE President Professor Mario Boidi

It is with deep sadness that the CFE Tax Advisers Europe Executive Board Members and CFE Office Team join together in paying their respects to the late Professor Mario Boidi.

Professor Boidi was a Founding Father of the European Tax Profession within the CFE Tax Advisers Europe (1959-2020), over the years wearing the hats of CFE Delegate to the General Assembly, CFE President and Honorary President. The enthusiasm and passion he put in his work and collaboration with CFE, his unparalleled expertise and, above all, his wonderful presence will be deeply missed.

Apart from being a strong pillar of CFE Tax Advisers Europe, Professor Boidi was also a very esteemed colleague to most and a dear friend to many. The President and Executive Board of CFE Tax Advisers Europe takes this opportunity to extend their deepest and most sincere condolences to Professor Boidi's family and loved ones, in the hope that his dear memory will bring comfort to all.

May his soul rest forever in perfect peace.

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BRUSSELS I 23 MARCH 2020

1. EU Approves Temporary State Aid Framework

The European Commission last week adopted a Temporary Framework concerning State aid measures to assist Member States in dealing with the economic impact of the COVID-19 outbreak.

To minimise the economic impact of the COVID-19 outbreak, the Framework allows Member States to provide aid by: providing grants, selective tax advantages, and advance payments of up to 800,000 Euro; providing State guarantees for loans taken by businesses; subsidising public loans to companies, putting in place safeguards for banks providing State aid to the economy; and providing short-term export credit insurance.

Executive Vice-President Margrethe Vestager said of the Temporary Framework, *"The economic impact of the COVID-19 outbreak is severe. We need to act fast to manage the impact as much as we can. And we need to act in a coordinated manner. This new Temporary Framework enables Member States to use the full flexibility foreseen under State aid rules to support the economy at this difficult time."*

More information concerning the Framework is available here.

2. ECOFIN Meeting Conducted by Teleconference

Due to the COVID-19 outbreak, the Economic and Financial Affairs Council meeting took place by way of teleconference on 23 March 2020.

During the meeting, ministers discussed the economic impact of the COVID-19 outbreak and EU measures implemented by way of response, in particular State aid and options offered by the Stability and Growth Pact.

The ministers also discussed the European Semester 2020 reports, and the means to proceed with the reports, as well as potential impact on the reports in light of COVID-19.

3. OECD COVID-19 Tax Policy Response Recommendations

The OECD has created a webpage concerning COVID-19 outbreak, providing information and country profiles on the spread of the virus, and recommended policy responses concerning a variety of areas.

In relation to tax policy responses, the OECD sets out various recommended measures, including, amongst other measures, more generous welfare and income support payments, deferral or waiver of employer and self-employed social security contributions, tax concessions for those working in health and emergency services, deferral of VAT and custom duties payments, expediting the payment of refunds, deferring or waiving taxes, or increasing loss carry-forward provisions.

Further information is available here.

4. EU Plans to Introduce AML Regulation

The European Commission is reportedly planning to introduce an EU Regulation to further plans under its Roadmap published in February concerning future steps in its "new comprehensive approach to preventing and combating money laundering and terrorism financing".

The Commission states in the Roadmap that "*more* harmon*isation at EU level, and possibly central EU mechanisms/bodies to strengthen the preventive framework in light of the cross-border nature of much money laundering in the EU and of the integration of the internal market."* are needed. Introducing an EU Regulation would arguably assist in a more streamlined approach across the EU to money-laundering prevention.

A policy communication will be issued in the coming months setting out the areas where further EU action will be taken. Extensive consultation with stakeholders will also take place in 2020, with a view to present new policy initiatives in early 2021.

5. Global Forum Holds First Peer Review Meeting

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes from 16 to 18 March held the inaugural meeting of their recently established Automatic Exchange of Information Peer Review Group (APRG), concerning the Standard for Automatic Exchange of Financial Account Information in Tax Matters. The meeting was held remotely.

Issues discussed included confidentiality and data security, the development of a framework to assist in establishing the gaps in a jurisdiction's legal framework and how peer reviews concerning the Standard will conclude whether jurisdictions have implemented the Standard effectively.

The Global Forum is the flagship body for ensuring the implementation of the internationally agreed standards of tax transparency and exchange of taxation-relevant information among tax administrations. Over 4,500 bilateral exchanges of information have taken place, in line with the Automatic Exchange of Information Standard, with the exchange containing information concerning financial accounts taxpayers hold outside their jurisdictions.

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BRUSSELS I 30 MARCH 2020

1. Joint Statement of European Council on EU Enlargement & EU COVID Response

The European Council has published a statement setting out their commitment to take the necessary steps to overcome the COVID-19 crisis. In the statement, the European Council reiterates the measures taken to assist Member States in dealing with the economic impact of the COVID-19 outbreak, including measures in relation to limiting the spread of the virus, to ensuring the provision of medical resources and to minimise the economic impact through the Temporary Framework.

The statement also endorses the Council of the EU conclusions concerning the Expansion of the EU, in which the Council of the EU decided to open accession negotiations with the Republic of North Macedonia and Albania.

In relation to economic measures taken to minimise the economic impact of the COVID-19 outbreak, the Council of the EU have agreed with the Commission assessment that that *"the conditions for the use of the general escape clause of the EU fiscal framework – a severe economic downturn in the euro area or the Union as a whole – are fulfilled"*, noting that *"The use of the clause will ensure the needed flexibility to take all necessary measures for supporting our health and civil protection systems and to protect our economies, including through further discretionary stimulus and coordinated action, designed, as appropriate, to be timely, temporary and targeted, by Member States."*

In addition, a proposal to extend the State aid Temporary Framework has been sent to Member States for consultation by the Commission. The Commission has also temporarily removed from the Short-term export-credit Communication all countries listed in the marketable risk list, in order to ensure public short-term export credit insurance is more widely available.

2. EU Commission Publishes Customs Union Roadmap

The European Commission has published a Roadmap concerning its Action Plan for Taking the Customs Union to the Next Level. The Commission aims to further *"IT implementation and optimisation, customs risk analysis and management, integration of operations and cooperation between customs authorities, harnessing innovation and improving efficiency of customs administrations"*. A forthcoming Communication will set out the Commission's strategy as concerns an EU-approach to risk management and supporting EU-custom administration controls.

The action stems from concerns raised by the European Court of Auditors, as well as the European Parliament, that the effectiveness of customs controls is lacking across the EU's external borders, leading to a loss of Traditional Own Resources and significant financial implications, most notably for VAT.

The Commission will publish the Communication to its co-legislators in the Parliament, Council and the Economic and Social Committee in the second quarter of 2020, alongside a public consultation. Feedback can also be provided concerning the Roadmap until 21 April 2020.

OECD's COVID-19 Taxation Measures Toolkit

The OECD has now published a Toolkit containing the details of taxation and financial measures taken by governments around the world in response to the COVID-19 outbreak.

The OECD has also created a dedicated webpage concerning the COVID-19 outbreak, providing information and country profiles on the spread of the virus, and recommended responses concerning a variety of policy areas. Pascal Saint-Amans, in a blogpost stated that *"one of the few certainties is that tax policy will play an important role in the immediate response of governments to support individuals and businesses, as well as in future rounds of policy action, including to rebuild our economies, which will ultimately take place once the health crisis has been contained. The OECD, working with other international organisations, will deploy all its data gathering power and analytical capacities to help governments across the world."*

The OECD recommends a range of tax policy measures be employed, such as more generous welfare and income support payments, deferral or waiver of employer and self-employed social security contributions, tax concessions for those working in health and emergency services, deferral of VAT and custom duties payments, expediting the payment of refunds, deferring or waiving taxes, or increasing loss carry-forward provisions.

BEPS Action 6 Peer Review Report on Preventing Treaty Shopping Published

The OECD has released the second Peer Review Report on Action 6 of the Base Erosion & Profit Shifting Project, concerning the prevention of granting treaty benefits in inappropriate circumstances. The report contains results concerning aggregate data of the Inclusive Framework jurisdictions as of 30 June 2019, which then totalled 129 jurisdictions.

The report concerning Action 6 sets out that the majority of the Inclusive Framework jurisdictions are in the process of modifying treaties in order to comply with their commitments made concerning treaty shopping, demonstrating the effectiveness of the BEPS MLI.

Message from the CFE Executive Board on the COVID-19 Impact

As each and every one of us is impacted by the alarming spread of COVID-19 and how it is affecting our lives, the CFE Executive Board had, regretfully, taken the difficult decision to cancel the CFE Annual Forum, the General Assembly and all the Technical meetings in April.

At present, it is uncertain what the next phases of the coronavirus outbreak will look like, and what measures will need to be taken. However, please rest assured that we will closely monitor and evaluate the situation, and keep you updated on whether there will be any impact on the other CFE events that are planned for this year. At this time, our priority is the safety and wellbeing of each our members, our staff and our partners. We have put in place a remote working scheme for our staff, in accordance with the applicable public health measures in Belgium, and are conducting our meetings via video and teleconference.

To the extent possible given these circumstances, the CFE Board together with the CFE Team continue to work on the existing projects and focus on relevant new technical publications and policy developments, in close conjunction with the Member Organisations and in synergy with the work of the EU institutions and the OECD. We encourage you to visit the CFE website and our social media channels (Twitter, Linkedin) to stay informed about the most recent CFE technical work and publications. As ever, the CFE Brussels Team is available to work with you on relevant tax technical or policy matters, and to assist you with any queries you may have.

We will continue to keep you abreast of developments in the CFE agenda in the period to come.

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Roundup of Global Tax News

BRUSSELS I **OCTOBER 2019**

1. GTAP Global Tax Conference & Torino-Busan Declaration

On 3 October, on the occasion of the Global Tax Advisers Platform (GTAP)'s inaugural conference in Torino, the GTAP founding bodies issued the Torino-Busan Declaration. In this document, GTAP sets out four key short-term priorities to pursue its fundamental purpose: the promotion of public interest by ensuring the fair and efficient operation of national and international tax system.

The four priorities highlighted in the Declaration are:

- Tax for Growth;
- Sustainable Tax Policies;
- Tax and Digitalisation;
- Taxpayer Rights and Certainty in a Fast-Paced World.

GTAP was formed in 2014 by CFE, AOTCA and WAUTI as a global response of tax advisers to international tax initiatives, with the aim of forging closer links among tax advisers throughout the world.

The Global Tax Advisers Platform provides the proper framework for a more dynamic, more inclusive cooperation among tax advisers, on the basis of enhanced dialogue, more effective collaboration and openness.

The Global Tax Advisers Platform's inaugural conference took place on 3 October 2019 in Torino on the topic of "*Tax & The Future*". The GTAP panelists, members of GTAP from Africa, Asia, Australia and Europe examined issues that are of interest to all tax advisers in a borderless, increasingly globalising and automated society, driven by new technologies. To that end, the expert speakers considered the evolution and future of the topics of global tax policy, corporate income tax and VAT, the global tax profession and business models and tax sustainability.

We invite you to read the Press Release for further information about the GTAP Torino-Busan Declaration.

2. 60th Years CFE Celebrated With Global Tax Conference & Anniversary General Assembly

Under the high patronage of the European Parliament, CFE Tax Advisers Europe celebrated its 60th Anniversary with a series of events, including General Assembly, the inaugural Global Tax Advisers Platform (GTAP) conference and technical committee meetings held over three days in Torino, Italy, hosted by the Italian member organisations of CFE - Associazione Nazionale Tributaristi Italiani (ANTI) & Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili (CNDCEC).

CFE President Piergiorgio Valente welcomed the delegates and high-level guests, and thanked the Member organisations of CFE, the Italian host member organisations, and the delegates for their commitment and their continuous support in achieving the goals and objectives of CFE Tax Advisers Europe over the many years.

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration addressed the General Assembly, highlighting the long-standing collaboration between the CFE and the OECD. Mr Saint-Amans said that CFE has been an active contributor to OECD's work since its inception in 1959 - only a few years before the publication of the 1963 OECD Model Tax Convention. Mr Saint-Amans welcomed CFE's recent contributions to OECD's public consultations and presented the upcoming OECD agenda on the taxation challenges of the digital economy.

Representing the European Commission, Bert Zuijdendorp discussed the important role that stakeholders like CFE play in the taxation policy initiatives of the EU. Mr Zuijdendorp also reflected on the synergy of the work undertaken by the OECD and the EU.

In a written contribution for the CFE's 60th Anniversary, Mr Valère Moutarlier, Director of Direct Taxation, European Commission said: *"CFE has been a prominent and constructive actor in the EU's tax arena for many years now. Its contributions to consultations, its submission of well-researched position papers and its membership in the Platform on Tax Good Governance are just a few of the ways in which it has brought its views and ideas to our attention. This Commission relies heavily on vocal, active and knowledgeable stakeholders for well-informed policy-making and CFE certainly meets this description. As we move forward now, towards a new mandate and a renewed agenda for taxation policy in Europe, I am sure that CFE will continue to liaise closely with the Commission and make its mark."*

The CFE Tax Advisers Europe was honoured to receive the patronage of the European Parliament of its 60th Anniversary, confirming the close links between the objectives of CFE's initiatives and the values of the European Union. In a written statement, the President of the European Parliament, Mr David Sassoli, said: *"The institution I have the honour to preside over greatly appreciates the professional and committed work of your organisation. The European Parliament very much admires the aim of your initiative, which is to present the goals of your organisation from its beginnings 60 years ago and to examine the close relationships forged with the European institutions over the years. It also highly values your activity as an important partner in the last European elections campaign."*, the European Parliament president said.

More information on CFE's Anniversiary is available on the CFE website.

3. OECD Consultation on Digital Tax – Unified Approach Under Pillar One

As announced by the Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans at the CFE meetings in Torino, the OECD Secretariat published the proposals concerning the taxation challenges of the digital economy. The Secretariat proposals introduced a 'unified approach' under Pillar One as the basis for further negotiations among the Members of the Inclusive Framework.

Under the proposed approach, new taxation rights for market jurisdictions are recognised as a matter of novelty. Conversely, under present international tax rules, zero profit could be allocated to any nexus not based on physical presence. The new rules are intended to apply to companies that derive value from consumer-interaction with users in market jurisdictions. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, through formulary apportionment and use of proxies such as sales.

Commenting, the OECD Secretary-General said of the new proposals: *"We're making real progress to address the tax challenges arising from digitalisation of the economy, and to continue advancing towards a consensus-based solution to overhaul the rules-based international tax system by 2020. This plan brings us closer to our ultimate goal: ensuring all MNEs pay their fair share. Failure to reach agreement by 2020 would greatly increase the risk that countries will act unilaterally, with negative consequences on an already fragile global economy. We must not allow that to happen,"* Mr Angel Gurría said.

Stakeholders are invited to send comments on the policy, technical and administrability issues raised by the proposal before 12 November 2019, 12:00 CEST, by email to TFDE@oecd.org in Word format. A public consultation is scheduled for 21-22 November in Paris.

4. UN Tax Committee Meeting: Taxation and SDGs

The 19th Session of the UN Committee of Experts on International Cooperation in Tax Matters held in Geneva on 15- 18 October saw a debate on the relevance of taxation policy for the attainment of Sustainable Development Goals (SDGs), among other topics. Other agenda items included the tax challenges of the digitalisation of the economy, update of the UN Nations Model Double Taxation Convention between Developed and Developing Countries, production of a UN Handbook on Tax Dispute Avoidance and Resolution as well as an update of the UN Transfer Pricing Manual.

Speaking on behalf of the United Nations Department of Economic and Social Affairs, Ms Caroline Lombardo, Acting Chief of the UN International Tax and Development Cooperation Branch highlighted the "important role of progressive tax systems and SDG-oriented fiscal policies: not only to raise revenue to finance sustainable development but also to reduce inequality, promote inclusive growth and protect the environment."

As a follow-up to the UN first High-level Dialogue on Financing for Development and the Addis Ababa Action Agenda of 2015, Ms Lombardo stressed the critical role of the United Nations in international tax cooperation and shaping tax standards to ensure more inclusive process, whilst balancing such changes with greater certainty for taxpayers and governments. "*Strengthened tax administration and collection are critical and must be* *accompanied by further transparency on budgets and expenditures, to foster tax morale and trust in governments. Global action is needed to close loopholes and safeguard country efforts to mobilise domestic resources, including through tax cooperation that promotes favourable investment and trading climate that can generate jobs, expertise, a sense of independence, dignity and security*", the UN official added.

5.Guidance on Foreign-Source Income Exemption Regimes – European Union 'Blacklist' Update

In the context of the EU evaluation of tax good governance standards by third countries and the list of non-cooperative jurisdictions for tax purposes performed by the Code of Conduct Group (Business Taxation), the Council of the EU published Guidance on foreign source income exemption regimes. The published EU guidelines aim to help third countries comply with EU's tax standards, in particular those that the EU considers harmful tax practices.

According to the document, an overly broad definition of income excluded from taxation, notably foreign sourced passive income without any conditions or a nexus not complying with the PE definition contained in the OECD Model Tax Convention, shall be considered harmful practices aimed at facilitating double non-taxation. These guidelines will serve as a basis for the continued 2019 screening of third country jurisdictions.

The Council recently endorsed removal from the EU black and/ or greylist of a number of jurisdictions, including the United Arab Emirates, Albania, Costa Rica, Serbia, Switzerland, Mauritius and the Marshal Islands, establishing that those countries have implemented reforms to comply with EU tax good governance standards. Nine jurisdictions remain on the EU blacklist: American Samoa, Belize, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

6. Platform for Collaboration on Tax Issues Draft Transfer Pricing Toolkit

The Platform for Collaboration on Tax, a joint initiative of the IMF, OECD, UN and World Bank Group, has issued a draft toolkit designed to help developing countries in the implementation of effective transfer pricing documentation requirements. The toolkit considers current approaches of tax administrations concerning documentation for transfer pricing analysis and policy matters that may give guidance to developing countries.

The Platform for Collaboration on Tax are seeking input on this draft of the toolkit by 8 November 2019. Particular points concerning which the Platform is seeking input include: whether the draft toolkit addresses all the relevant considerations for the design of an effective transfer pricing documentation regulatory system; whether particular approaches (e.g. penalties or compliance incentives) are especially beneficial for limited capacity developing countries, in terms of enforcement of transfer pricing documentation; whether there other transfer pricing documentation requirements not covered in this toolkit that should be considered; and what additional considerations and/or tools can be included to assist developing countries to implement effective transfer pricing documentation.

7. OECD BEPS Action 14 Peer Review Reports Update

In the framework of the work undertaken under BEPS Action 14 and the improvement of the tax dispute resolution mechanisms, the OECD issued the 6th round of peer review reports, assessing the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project.

The published reports include jurisdictions such as Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania and South Africa with over 230 targeted recommendations that will be followed up in stage 2 of the peer review process. BEPS Action 14 seeks to improve the tax-dispute resolution mechanisms via the Inclusive Framework peer-review process, which looks into the compliance with the minimum standard reviewed and monitored by peer countries.

8. Australian Taxation Office To Assess Airbnb Rental Income

The Australian Taxation Office has reportedly commenced with assessment of income tax of home owners who rent out their apartments via the AirbnB platform. As a result of this policy, the ATO will verify the details of taxpayers who earn an income from short-term rental platforms against the income declared on their tax returns.

A spokeswoman for ATO stated: *"Over the next 12 months, the ATO will issue letters to those taxpayers identified as using sharing economy accommodation platforms who haven't declared the rental income they have received. The objective is to identify and educate those individuals to ensure they include the correct amount of rental income from these sources in their returns and pay the appropriate tax. This will ensure there is a level playing field for all people operating accommodation services in the community."*

9. GTAP: 17th AOTCA's General Meeting & International Tax Conference on 16 – 18 October 2019 in Busan

Piergiorgio Valente, President of CFE Tax Advisers Europe and Chairman of the Global Tax Advisers Platform (GTAP) attended the 17th AOTCA's General Meeting & International Tax Conference held in Busan, South Korea, on 16 – 18 October 2019. Piergiorgio Valente represented CFE Tax Advisers Europe at the GTAP meeting held on 16 October, meeting also with the Asia Oceania Tax Consultants' Association (AOTCA) Council and General Assembly. The meetings and event were hosted by the Korean Association of Certified Public Tax Accountants.

10. CFE Conference On Anti-Money Laundering: Paris – 29 November 2019

The CFE Tax Advisers Europe is pleased to invite you to the 12th European Conference on Tax Advisers' Professional Affairs, entitled "Making Anti-Money Laundering More Effective For Tax Advisers". This year, jointly organised by CFE and the Institut des Avocats Conseils Fiscaux (IACF), the conference will take place at the Maison de l'Artisanat in Paris, France, on Friday 29 November 2019 from 9:15 am to 4 pm.

Considering all the recent developments on the anti-money laundering front, we invited representatives of the OECD Tax & Crime Division to speak about the international approach against money laundering concerning tax evasion and tax crimes, alongside speakers from academia, practice and other international organisations. Tax practitioners from the Netherlands, France and the United Kingdom will shed light on the effect of anti-money laundering directives in practice. We expect that the speakers will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments and will also discuss the compliance with the new and existing EU Anti-Money Laundering Directives, as well as the efforts taken to address money laundering in the broader international context.

Register now to secure your place at the conference.

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BRUSSELS I **NOVEMBER 2019**

1. Public Consultations on OECD Two-Pillar Approach for Taxation of Digitalising Economy

In November, the OECD held a public consultation in Paris on its proposals for taxation of the digitalising economy on the basis of the 'unified approach' under Pillar One. Under the proposed approach, new taxation rights for market jurisdictions are recognised as a matter of novelty. The new rules are intended to apply to companies that derive value from consumer-interaction with users in market jurisdictions. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, through formulary apportionment and use of proxies such as sales.

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration confirmed that the work at government representative level is ongoing, with the Secretariat proposal serving as a blueprint for further negotiations. The next Inclusive Framework meeting is scheduled for January 2020.

Representatives from the OECD, the BEPS Inclusive Framework, academics, tax practitioners and advisers and representatives of businesses addressed substantive issues arising from the Unified Approach proposal, in particular scope and nexus, computation of Amount A, elimination of double taxation in relation to Amount A, fixed remunerations under Amount B as well as dispute prevention and resolution. There was an emerging consensus that the new challenges arising from digitalisation were conducive to a shift toward formulary apportionment, however, discussions could not agree on the precise principles underpinning such a shift. In addition, there was some criticism from the floor on the lack of clear principles justifying the departure from the arm's length principle; that the absence of a coherent rationale might potentially undermine the goal to achieve fairness with the new profit allocation rules.

Generally, participants sought clarity on definitions such as residual profits, businesses within scope of the proposal, the viability of the proposed coexistence of the two systems (existing tax rules under Amount B and C vs. new nexus and taxing rights under Amount A), as well as guarantees for robust and effective dispute prevention and resolution mechanisms. Representatives of business models which traditionally do not derive meaningful value from user interaction ('consumer-facing') sought to be carved out of the new rules. On the administration-side, opportunities for simplification of the rules were also discussed, with suggestions for a central coordinating jurisdiction or one-stop-shop to audit Amount A, such that the parent entity would file a return on behalf of the group entities, informing other jurisdictions of about the portion they would be entitled under Amount A, with a possibility for a single jurisdiction to collect and remit the tax due for the other jurisdictions involved.

CFE issued an Opinion Statement responding to the consultation highlighting a number of key elements that should be embedded as part of this process, calling for more clarity and early consensus at political level, and emphasised the significance of departing from well-established principles of international tax law.

The OECD on 8 November published a further public consultation document concerning Pillar Two of its two-pillar approach to addressing the taxation challenges of the digitalising economy, the so-called "Global Anti-Base Erosion Proposal", or "GloBE" proposal, which seeks to address outstanding BEPS issues by introducing a global minimum tax and providing *"jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation".* The approach would seek to apply an income inclusion rule and deduction denial in tandem to achieve the intended aim of global anti-base erosion.

Interested parties will be able to submit comments until 2 December 2019 by e-mail to taxpublicconsultation@oecd.org via Word format. Following the written consultation process, a further public consultation meeting will be held on 9 December in Paris.

2. Tax Dispute Resolution: OECD Invites Input on 10th Batch of BEPS Action 14 Peer Reviews

In the framework of the BEPS Action Plan, and steps undertaken under BEPS Action 14 concerning the improvement of tax dispute resolution mechanisms, the OECD has now invited input concerning the 10th round of peer reviews, in order to assess the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project.

Input is requested in relation to the jurisdictions of: Aruba, Bahrain, Barbados, Gibraltar, Greenland, Kazakhstan, Oman, Qatar, Saint Kitts and Nevis, Thailand, Trinidad and Tobago, the United Arab Emirates and Vietnam. BEPS Action 14 seeks to improve the tax-dispute resolution mechanisms via the Inclusive Framework peer-review process.

Interested parties are requested to submit completed responses to the Peer Review questionnaire via e-mail to fta.map@oecd.org in Word format by 16 December.

3. Italia Africa Business Week – 26 & 27 November 2019

The Italian Ministry of Foreign Affairs and International Cooperation was the co-patron of the third annual Italia-Africa Business Week Conference, this year held in Milan on 26 and 27 November 2019.

The conference aims to facilitate entrepreneurial trade, financial partnerships and cooperative agreements between Italy and Africa. Attendees from international financial institutions, ministerial departments, capital investment firms and entrepreneurial experts attended the conference.

Piergiorgio Valente, President of CFE Tax Advisers Europe, participated in a panel which explored issues concerning customs and trade between Africa and Italy, together with the Ambassador of Mali in Italy, President of the Chamber of Commerce Italia-Mozambique and the General Delegate of Cepex.

4. EU Council Updates Non-Cooperative Tax Jurisdictions List

In the context of the EU evaluation of tax good governance standards by third countries and the list of non-cooperative jurisdictions for tax purposes, the Code of Conduct Group (Business Taxation) in November carried out an evaluation of tax good governance standards by third countries. Thereafter, the ECOFIN Council on 8 November approved the changes recommended by the Code of Conduct Group to the list of non-cooperative jurisdictions for tax purposes.

The Council accordingly endorsed the removal of Belize from the blacklist to the grey list, after establishing that it had implemented reforms to comply with EU tax good governance standards. It will be removed from the Annex II grey list in the future, subject to implementation of further changes concerning its foreign source income exemption regime. On the basis that North Macedonia has fulfilled the tax good governance criteria set out by the EU, the ECOFIN Council also approved the recommendation that it be removed entirely from the Annex II jurisdictions list.

Additionally, as a result of Jordan joining the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inclusive Framework on BEPS on 29 October, it has now fulfilled the tax good governance criteria set out by the EU and as a result the Code of Conduct Group recommended Jordan be removed from Sections 1.2 and 3.1 of Annex II of the Blacklist. The General Secretariat of the Council of the EU recommends in a note to the EU Member states that these changes be approved at the next ECOFIN Council.

Eight jurisdictions now remain on the EU blacklist: American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

5. OECD Releases Further Country-by-Country Reporting Implementation Guidance

As a follow-up of BEPS Action 13, the OECD /G20 Inclusive Framework on BEPS has released updated guidance on the implementation and operation of Country-by-Country Reporting (CbCR). The new guidance includes the treatment of dividends, the operation of local filing, the use of rounded amounts in Table 1 of an MNE Group's CbC report and the information that must be provided with respect to the sources of data used.

6. Platform for Collaboration on Tax Consultation on Draft Transfer Pricing Toolkit

In November, the Platform for Collaboration on Tax, a joint initiative of the IMF, OECD, UN and World Bank Group, held a public consultation a draft toolkit designed to help developing countries in the implementation of effective transfer pricing documentation requirements. The toolkit considers current approaches of tax administrations concerning documentation for transfer pricing analysis and policy matters that may give guidance to developing countries.

GTAP welcomed the draft toolkit, and set out its view that the toolkit has significant potential impact in terms of developing uniformity in practice across jurisdictions. GTAP's responses to the consultation questions were based on responses compiled by fellow founding GTAP member, the West African Union of Tax Institutes and its member organisation, the Chartered Institute of Taxation of Nigeria (CITN).

7. Czech Government Approves Digital Tax Plan

The Czech Republic's government has approved plans to introduce a digital services tax to apply to businesses making revenue from Czech users' data, in particular targeting advertising, social media platforms, online marketplaces and user data sales.

The proposed tax would impose a 7% digital services tax on domestic digital sales for companies with a global turnover above 750 million Euros, and a national turnover above 100 million Czech koruna.

8. Regional OECD Consultation Meeting on Taxation of the Digital Economy in Manila

From 19 to 20 November a regional OECD consultation meeting was held for Asian and Pacific countries at the Asian Development Bank Headquarters in Manila concerning the OECD's Inclusive Framework's work on taxation of the digitalising economy and the reallocation of taxing rights and minimum corporate income taxation.

Consultation sessions were held for government, civil society and business and ABD member countries, with officials from government finance ministries, revenue authorities, technical experts and policy makers in attendance. A separate meeting was also held which focused on capacity building issues in developing countries in the Pacific Region.

9. Japan and Peru Sign New Tax Treaty

On 18 November, Japan and Peru signed a tax treaty which sets out as its principle purpose the aim of preventing treaty shopping and tax evasion. The treaty sets the taxation rate for withholding taxes on dividends at 10 percent, and at 15 percent on royalties.

The treaty also provides for a mutual agreement procedure, ensuring taxpayers have a mechanism for resolving tax disputes between the jurisdictions. The new agreement will enter into force once ratified by the countries.

10. OECD Publishes New Africa Revenue Statistics

In November, the OECD published the Revenue Statistics in Africa report, providing an analysis of tax revenue and statistics concerning 26 countries in Africa, namely: Botswana, Burkina Faso, Cabo Verde, Cameroon, Republic of the Congo, Democratic Republic of the Congo, Côte d'Ivoire, Egypt, Equatorial Guinea, Eswatini, Ghana, Kenya, Madagascar, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Togo, Tunisia and Uganda.

The report shows that the countries create over 75% of the GDP in Africa, with tax to GDP ratios varying widely between the subject countries from 5.7% to 31.5%. Tax revenues were shown to plateau from 2017, whilst non-taxation revenue declined. Whilst personal income taxation and social security contribution levels remain low on average in the countries, revenue collected from taxes on goods and services and personal income tax has increased over the past 10 years.

Further information on the key findings of the report can be viewed here.

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BRUSSELS I **DECEMBER 2019**

1. OECD Meeting on Pillar Two: Stakeholders' Input on the OECD Secretariat Proposals

A public consultation took place at the OECD in Paris on 9 December concerning the OECD Global Anti-Base Erosion Pillar 2 Proposal. Representatives from the OECD, the BEPS Inclusive Framework, academics, tax practitioners and advisers and representatives of business were in attendance. Ahead of the consultation, the OECD published the comments submitted by stakeholders to the Secretariat proposals.

CFE issued an Opinion Statement responding to the consultation setting out its view that there are too many variables in the GloBE proposal, with ramifications that could arise from the open policy and key design questions, calling for more certainty, simplicity and absence of double or multiple taxation. CFE's statement highlights a number of key elements that should be embedded as part of this process, namely that:

- The process needs to address the interaction of the four elements of Pillar Two, as it transpires that these are not intended to apply simultaneously, but no decision has been made as to which rule will take priority.
- The complexity of this proposal under Pillar Two confirms the need for a streamlined multilateral cooperation process; otherwise the system will become unworkable.
- The introduction of CFC rules are designed to achieve the same objective as the income inclusion rule. From CFE's perspective a simpler alternative to the income inclusion rule might be world-wide introduction of effective CFC rules.
- There are potentially a number of EU law points raised with the income inclusion rule which must be considered and resolved.
- The achievement of the policy aim to establish global minimum tax will depend significantly on the chosen model: jurisdiction-by-jurisdiction approach or an average global rate approach.
- Clarity would be welcome on the interaction between Pillar One and Pillar Two – CFE welcomes introduction of multilateral instruments where treaty benefits/ payments are being denied based on effective rate under Pillar Two, if the effective tax rate is based on a payment that is subsequently spread across multiple jurisdictions under Pillar One.

- As with Pillar One enhanced dispute prevention and resolution mechanisms will be essential, including multilateral mandatory binding arbitration.
- CFE is concerned that the use of financial accounts as a starting point for determining the tax base for the GloBE proposal would amount to more complexity.

Additionally, to evaluate the full effect of the existing BEPS standards, some of which are still under implementation in most countries of the Inclusive Framework, CFE in its Opinion Statement set out that a longer-term perspective seems more appropriate to appreciate the entirety of the remaining BEPS issues.

Those who were unable to attend can watch the consultation on OECD WebTV, via the OnDemand tab of the OECD platform.

Work at government representative level is ongoing, with the Secretariat proposal serving as a blueprint for further negotiations. The next Inclusive Framework meeting is scheduled for January 2020. However, the anticipated timeline for progress concerning the OECD proposals may be compromised by the recent position adopted by the US in its letter to the OECD on 3 December, suggesting the Pillar 1 proposals could apply as a safe-harbour.

2. Tax Statistics Indicate Revenue Plateau

In December, the OECD published the Revenue Statistics 2019 report. The report demonstrates that the average tax to GDP in the majority of the jurisdictions had not changed significantly from 2017 to 2018, and had in fact decreased in 15 countries. Significantly, the overhaul of the American corporate tax system led to a decrease from 26.8% in 2017 to 24.3% in 2018. Increases in tax revenues were observed in 19 countries.

The statistics from the report can be accessed via the OECD Global Revenue Statistic database, which provides detailed comparable taxation revenue information concerning jurisdictions.

3. US Letter Threatens to Upend OECD Digital Tax Discussions

In a letter to the OECD dated 3 December US Treasury Secretary, Steven Mnuchin stated that the US has *“serious concerns regarding potential mandatory departures from arm’s-length transfer pricing and taxable nexus standards—longstanding pillars of the international tax system upon which U.S. taxpayers rely, Nevertheless, we believe that taxpayer concerns could be addressed and the goals of Pillar 1 could be substantially achieved by making Pillar 1 a safe-harbour regime”*.

Were the Pillar 1 proposals to take the form of a safe harbour, this would allow governments to choose to adopt the regime, as opposed to it being mandatory to adopt it. If the approach were to be mandatory for the countries signing up, as was planned up until the US letter being sent, this would become mandatory for example by way of signing a new MLI. It would appear that the US is now proposing the measure be designed as a "safe harbour", meaning that companies could choose to apply or ignore Pillar 1.

In the response to the US letter, Angel Gurria, Secretary-General of the OECD, stated that *“throughout the extensive consultation process, however, we had so far not come across the notion that Pillar 1 could be a safe-harbour regime*”, emphasising that the public consultations held to date *“clearly identified the need for greater tax certainty and* *administrability"*, noting that this *"is why the OECD proposal on a "Unified Approach" contains a very strong tax certainty dimension"*. The letter notes that the US raising this issue may impact on the ability of the OECD to adhere to the deadlines agreed by the Inclusive Forum.

The US has been invited to meeting with the OECD prior to Christmas to discuss the issue further.

4. Montenegro & Honduras Join Inclusive Framework on BEPS

In December, both Montenegro and Honduras became members of the OECD/G20 Inclusive Framework on BEPS, becoming the 136th and 137th countries to join, respectively. The OECD's Inclusive Framework of minimum standards was devised by the OECD and G20 countries as part of the 2015 Base Erosion Profit Shifting Plan (BEPS).

Joining the OECD Inclusive Framework also indicates compliance with conditions set by the European Commission concerning the EU's list of non-cooperative jurisdictions in taxation matters aimed at promoting tax good governance and minimising tax avoidance.

5. New EU Commission Takes Office

The newly elected European Commission / College of Commissioners led by President Ursula von der Leyen took over from Jean Claude Juncker in December, becoming the first woman to lead the EU 'government'. With the first gender-balanced Cabinet, von der Leyen promised to lead a geopolitical Commission that will harness the opportunities of the digital age whilst protecting the 'European way of life'. The new Economy Commissioner, Paolo Gentiloni, whose portfolio includes taxation will work together with Executive Vice-President Margrethe Vestager who is responsible for overseeing the enforcement of the EU State aid rules as well as making sure that Europe benefits from the digitalisation of the economy.

In her first working day, President von der Leyen pledged to make Europe the first climate neutral continent by 2050. The New Green Deal for Europe includes a revised Energy Taxation Directive. According to the leaked draft, the Commission will present a proposal to revise the Energy Taxation Directive to align it with Europe's climate ambitions by instructing the Commission services to "send the right pricing signals through appropriate taxation and subsidies policies, reflecting too on the use of competition policy tools that could support such transition". To that aim, the Commission will pursue efforts to move away from unanimity for taxation policies, and will review the State aid guidelines for environment and energy, to bring them in line with the New Green Deal. Draft Council Conclusions on the EU energy taxation framework also refer to energy taxation as an important fiscal instrument that could steer successful climate-friendly transition towards lower greenhouse gas emissions.

6. Recap: CFE Conference on AML Rules, Paris - 29 November 2019

The 12th European Conference on Tax Advisers' Professional Affairs, hosted by CFE and IACF, took place on 29 November 2019 entitled "Making Anti-Money Laundering More Effective for Tax Advisers". With the introduction of various compliance obligations arising out of the EU anti-money laundering rules, that have been introduced by the 5th AMLD, panellists also discussed the issues of introduction of beneficial ownership registers and the related trends of making such registers public, as well as the existing FATF Standards and Recommendations that build on other EU transparency initiatives to prevent money laundering. As such, the panellists addressed the newly established regulatory environment as well as the background issues arising out of various public revelations such as Panama Papers, how those affected the public, industries including tax advisory services and financial institutions, and how the OECD efforts in fighting money laundering by the unit on Tax & Crime address these problems.

The panel 1 discussion addressed the international approach against money-laundering, and was chaired by Dick Barmentlo, Member of the CFE Professional Affairs Committee. As a key-note speaker, Nilimesh Baruah from the OECD Centre for Tax Policy and Administration presented the OECD work related to tax and crimes. Mr Baruah discussed the increasingly complex and innovative forms of tax evasion and other financial crimes as well as the intrinsic link between such crime and the use of corporate vehicles. Coinciding with the 10th Anniversary of the OECD Global Forum on Tax Transparency and Exchange of Information, Mr Baruah highlighted the indispensable role of the Global Forum in improving transparency tools worldwide. Mr Baruah also spoke of the role of the Forum in providing governments tools to exchange data on previously opaque information, and give enforcement authorities means to address issues arising from the opacity of such structures for the benefit of their citizens.

Dr Kateryna Bogouslavska, of the Basel Institute of Governance and Chatham House explained the relevance of the Basel AML Index, a research based ranking of countries' exposure to ML and TF risks. Dr Bogouslavska discussed the tax related risks and the relevance for tax advisers of the data and analysis contained in the publicly available Basel AML Index. In the same panel discussion, a UK perspective on the AML approach was presented by Samantha Bourton of the UWA, who described the UK as one of the pioneer jurisdictions in implementing key AML international obligations, often going well beyond the minimal requirements of the EU legislation. Finally, Professor Robby Houben, of the University of Antwerp discussed the emergence and proliferation of crypto assets and the risks for money laundering inherently contained in such new technologies largely based on distributed legers such as blockchain. In conclusion, Prof. Houben suggested that the perceived risks need to be addressed with future-proof regulation and enforcement, rather than 'blaming' the technology itself, which should be harnessed for wider societal benefit.

The second panel examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU's Risk Assessments, compliance with the new and existing EU AML Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion. The panel discussion was chaired by Heather Brehcist, Head of Professional Standards at the Chartered Institute of Taxation (UK). Panellists considered the effectiveness and the impact of existing EU rules and the new requirements of the 5th AMLD, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership. Wim Gohres, Chair of CFE's Professional Affairs Committee and John Binns, Partner BCL Solicitors UK, presented the AML rules in practice. Mr Gohres presented the application and administration of the AML rules in practice from a perspective of AML compliance in the Netherlands. Mr Binns highlighted the risks, challenge and opportunities arising out of the potential regulatory divergence between EU and the UK post-Brexit. Christian Leroy, a Member of the Board of the Conseil National des Barreaux, France compared and contrasted the differences in the implementation of the AML regime across EU jurisdictions, primarily identifying the issue of the original intent of the AML regime to apply to the financial sector, such as banks, and subsequently being adapted to the non-financial sectors. Lastly, Gary Ashford, CFE Vice-President discussed the approach to civil treatment of tax fraud evaluating the possibilities and risks, the client perspective on such issues, reputational risks and transparency issues arising out of the international legal obligations such as DAC and OECD-based instruments for exchange of information. Mr Ashford highlighted the issues related to civil investigations of tax fraud, such as contractual disclosure facilities and the negotiated financial settlements.

7. Turkey Introduces Digital Tax

In December, new legislation passed by Turkey's Parliament was published in the country's official gazette, which introduces a digital services tax to apply to digital advertising, sales of digital content and online digital marketplaces.

The legislation will impose a 7.5% digital services tax on domestic Turkish digital sales for companies with a global turnover above 750 million Euros, and a national turnover above 20 million Turkish lira.

The tax will apply from March 2020.

8. Council of EU Adopts Report on Defensive Administrative Measures for Tax Blacklist

In December, the Council of the EU adopted a report of the EU's Code of Conduct Group (Business Taxation), which sets out a detailed 6-monthly progress report on achievements of the Code of Conduct Group, and the status of jurisdictions that have been examined under the list.

Notably, the report details that the Code of Conduct Group reached agreement at its meeting on 14 November concerning guidance for Members States on defensive measures that can be taken in the tax field concerning non-cooperative jurisdictions.

The guidance sets out co-ordinated actions for Members States to take of a legislative nature, to encourage compliance with the Code of Conduct screening criteria as well as other international standards. Member States are recommended to apply at least one of the measures, which include non-deductibility of costs, CFC rules, withholding tax measures and denial of participation exemption on profit distribution.

9. Brazil Transfer Pricing Report Published

In December, the OECD published a report concerning a transfer pricing project carried out between the Brazil Revenue Authority and the OECD, comparing the present Brazilian transfer pricing framework against the OECD Transfer Pricing Guidelines for Multinational Enterprise and Tax Administrations.

The project was launched in February 2018, as a means to build on Brazil's collaboration with the OECD after it joined the Global Forum on Transparency and Exchange of Information for Tax Purposes.

10. EU Council Adopts New Anti-Money Laundering Framework

The Council of the EU on 5 December adopted conclusions setting out priorities for the EU's new anti-money laundering framework, seeking to guide the EU Commission in introducing harmonised EU anti-money laundering rules as well as enhanced anti-money laundering supervision across the EU, primarily addressed to the financial sector.

The Council in its recommendations urges Member States to transpose the AML legislation as soon as possible into national law. The conclusions also invite the Commission to explore further possible means of improving AML rules, such as further enhanced cooperation between authorities involved in anti-money laundering.

The conclusions can be viewed here.

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BRUSSELS I **JANUARY 2020**

1. Digital Tax: No Support for the US 'Safe Harbour' Approach Despite Trade War Threats

The US proposition to make Pillar One optional by allowing companies to 'opt out' of the newly proposed profit allocation rules continues to create tensions among governments and "will not fly politically", the OECD Tax Director Pascal Saint- Amans has said. In addition, Martin Kreienbaum, the Chair of OECD's Committee on Fiscal Affairs, who is also a Director General for International Taxation at the German Federal Ministry of Finance, stated that countries will not accept partial solutions, saying the "*Germany is willing to compromise on Pillar One only if there is a Pillar Two as well*", which concerns the global anti-base erosion proposal and minimum tax.

However, last week brought us a step closer to solving the digital tax conundrum, following meetings between French, EU and US officials at the margins of the World Economic Forum elite gathering in Davos. Bruno Le Maire, Minister of Finance of France, and Steven Mnuchin, the US Treasury Secretary, alongside OECD Secretary-General Angel Gurria agreed to avoid a potential trade war following the introduction of the French Digital Services Tax. The US side agreed to suspend the imposition of tariffs on French goods whilst France agreed not to collect the digital tax until the end of 2020, subject to an OECD agreement by the end of year.

French president Macron confirmed the positive developments, whilst expecting that Paris and Washington will continue negotiations over the digital tax at the OECD until the end of the year. "*France is pursuing its objective of fair taxation on digital companies and finding a compromise within the framework of the OECD,*" the French president stated. The White House did not comment on the matter, but US Assistant Secretary of Treasury Chip Harter suggested that the US letter of last December insisting on Pillar One being a 'safe harbour regime' is still valid. According to media reports, Mr Harter said the United States position has not changed, but the wording on 'safe harbour' should not be understood as 'optional'.

The EU is seeking to avoid a full-blown trade war with the US over digital taxes. To that end, Commission President Ursula von der Leyen met with US President Donald Trump in Davos. In addition, Croatia's Prime Minister Andrej Plenković, currently holding the EU Presidency, stated that the EU and the US are partners who need to find a common language on digital tax at the level of OECD, saying that (national) measures that lead to tariff retaliation from the US side are not helpful.

The latest update from the OECD on this very topic will be cast via the OECD Tax Talks webpage at 31 January 14:00 – 15:00 CET. Registration for the webcast is now open.

2. OECD Publish Country-by-Country Reporting Guidance

As a follow-up to BEPS Action 13, the OECD/G20 Inclusive Framework on BEPS has released additional interpretative guidance on the implementation and operation of Country-by-Country Reporting (CbCR).

The new guidance is intended to provide improved tax certainty for ta administrations and MNEs, and addresses automatic exchange concerning local filings of Country-by-Country reports.

3. ATAF: Africa Has Right to Its Fair Share of Tax

Ahead of the Inclusive Framework meeting scheduled for 29 - 30 January, a meeting of the African Tax Administration Forum (ATAF) took place in Pretoria, for "*important discussions that will play a crucial role in determining how Africa responds to the global proposals to address the tax challenges from the digitalisation of the economy.*" ATAF members sought to agree a common position that will be presented on behalf of African countries in Paris, in particular by ensuring that "*new global tax rules will be fit for purpose in Africa and redress the current imbalance in taxing rights that disadvantage African countries*.", ATAF stated in a press-release.

4. Vietnam & Palau Join the Global Forum on Tax Transparency

In January, Vietnam and Palau became members of the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes, becoming the 159th and 160th countries to join, respectively. The Global Forum on Tax Transparency members aim to address tax evasion by implementing measures and standards agreed at international level in relation to transparency and exchange of information, both on request and through automatic exchange of information processes. Members of the Global Forum are also subject to Peer Review assessments as concerns their compliance with the minimum standards on transparency and exchange of information.

5. European Economic & Social Committee Recommend Use of Tax Policy to Achieve Sustainable Development Goals

In December, the European Economic & Social Committee published an opinion concerning potential means of achieving Sustainable Development Goals by use of investment and taxation policy methods. Rapporteur for the opinion, Krister Andersson, noted that *"taxation policies determine the economic environment in which investment, employment and innovation in businesses take place and they provide governments with revenues for financing public spending. These policies are hence fundamental for achieving the Sustainable Developments Goals and they must be made fit for purpose."*

Notably, the opinion sets out the EESC's view that the use of tax policies concerning climate change would help achieve many sustainable development goals. The Committee further recommends that the EU join the Global Forum on Tax to engage more widely in debate concerning solutions for corporate taxation in the digital economy that can encourage growth and cross-border trade.

6. EU & UK Sign Withdrawal Agreement – EU Asks Countries to Treat UK as EU Member State

On 24 January, the President of the European Council, Charles Michel and the President of the European Commission, Ursula von der Leyen signed the United Kingdom's Withdrawal Agreement, which formalises the UK's exit from the EU at midnight Central European Time on 31 January.

As of 1 February, the UK will cease to be a member state of the European Union, but the EU law will continue to apply to the UK at least until the end of the transition period – 31 December 2020 and the UK will be under jurisdiction of the European Court of Justice. Trade agreements can be negotiated by the UK with third countries during the transition period. A comprehensive free trade agreement will also be negotiated by the EU and the UK.

The Financial Times reported today that the European Commission will send a *note verbale* to 160 countries, a form of diplomatic correspondence, asking them to treat the United Kingdom exceptionally as a member state of the European Union until 31 December 2020, even though it will have left on 31 January 2020. The EU *note verbale* is intended to help the UK navigate through the uncertainty of the post-Brexit transition period.

7. OECD Release Tax Administration Assessment Models

The OECD has made available two new assessment models for tax administrations, the Tax Debt Management Model and the Tax Compliance Burden Maturity Model.

Over 820 Billion Euro is outstanding in collectible debt between the 53 members of the Forum on Tax Administration. The Tax Debt Management Model has been designed to assist administrations assess performance and encourage positive reform. The Tax Compliance Burden Maturity Model aims to identify burdens which may discourage or prevent compliance and negatively impact tax morale. Jim Harra, First Permanent Secretary and Chief Executive of HM Revenue and Customs, who worked on developing the model noted that "*Understanding and addressing burdens is not straightforward and depends on a number of elements, including a solid strategy, a culture of minimising burdens and the confidence and expertise to engage with policy makers."*

8. Cyprus & Saudi Arabia Ratify OECD BEPS MLI

In January, the jurisdictions of Cyprus and Saudi Arabia deposited instruments of ratification to 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 will enter into force for both jurisdictions on 1 May 2020.

9. EU Presents Post-Brexit UK Trade Deal Position

The European Commission published an internal EU27 preparatory document that sets out the EU views on the future relationship with the United Kingdom, regarding the free trade agreement.

The presentation sets out following the UK withdrawal from EU on 31 January 2020 under the conditions of the Withdrawal Agreement, a transitional period of 11 months will follow, under which UK shall remain significantly aligned with the EU rules. Such a period should lead to a comprehensive free trade agreement (FTA), potentially leading to regulatory alignment.

The European Commission warns however, that one of the possible outcomes come 1 January 2021 is a '*cliff-edge'* scenario, under which at the end of the transition period, the UK and EU will trade on less than optimal WTO terms.

10. Reminder: Applications Open for the CFE *Albert J. Rädler* Medal Award

CFE Tax Advisers Europe, in cooperation with IBFD, reminds all tax students at Master's level, as well as their supervisors, that the CFE receives applications from eligible tax students for the *Albert J. Rädler* Medal Award until **20 February 2020**. The award is intended to encourage academic excellence among young tax students. The Medal will be awarded at the CFE Forum, our flagship international tax conference on 2 April in Brussels.

The CFE will take care of travel and accommodation arrangements for the successful candidate to attend the CFE Forum. In addition, there is a monetary prize courtesy of the Rädler family and complimentary academic literature from our publishing partner IBFD. Applications are welcome at info@taxadviserseurope.org. More details are available on the CFE website.

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BRUSSELS I **FEBRUARY 2020**

1. OECD Release Digital Tax Economic Analysis

In a webcast streamed on 13 February 2020, the OECD released details of an economic analysis and impact assessment concerning the Pillar 1 and Pillar 2 proposals for taxation of the digital economy being negotiated by the Inclusive Framework on BEPS.

The preliminary findings of the analysis being undertaken through the work of the Framework indicate that the combined effect of the Pillar 1 and 2 proposals would lead to an increase of around 4% in global corporate income taxation revenue for both low, middle and high-income economies.

The analysis shows that Pillar 1 would lead to only relatively small increases in taxation, but would achieve a redistribution of taxation rights to market jurisdictions, meaning low and middle-income economies would experience a higher rate of increase in taxation under Pillar 1 than high-income economies. All countries would experience an increase in corporate income taxation under Pillar 2, and MNEs would see an increase in effective taxation rates, with the reduced dispersion in effective tax rates likely to reduce incentives for profit-shifting.

The webcast concerning the preliminary findings of the impact assessment can be viewed here.

2. G20 Communiqué Published

No significant progress was made at the G20 meeting in Riyadh in February, as concerns the taxation challenges of the digitalisation of the economy. Reportedly, there were tensions between the US Secretary of Treasury and his European counterparts, with European Commission officials tweeting that the US was not engaging and Secretary Mnuchin had left the room without taking the floor.

The official Communique of the G20 states that the leaders encourage further progress on both Pillars to overcome remaining differences and reaffirm their commitment to reach a consensus-based solution with a final report to be delivered by the end of 2020. The next meeting of the Inclusive Framework is scheduled for this summer in Berlin.

3. OECD Opens Consultation on Country-by-Country Reporting

The OECD has published a consultation document inviting input concerning Action 13 of the Base Erosion and Profit Shifting Project, on Country-by-Country Reporting. The review is being carried out pursuant to the BEPS Action Plan, which mandated a review of CbCR under Action 13 in 2020.

The consultation document invites input on whether modifications should be implemented for Action 13 such that additional or different data should be reported, requesting practical experiences and issues with reporting requirements under Action 13, input on the use of the reported data by tax administrations, and on the effectiveness and appropriateness of thresholds and reporting.

The consultation will be open until 6 March 2020. Comments should be submitted in Word format to taxpublicconsultation@oecd.org.

4. North Macedonia Becomes Signatory to BEPS MLI Convention

On 29 January, North Macedonia became the 94th jurisdiction to be a signatory to 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. It now extends to over 1,650 bilateral tax treaties.

5. EU Commission Publishes Anti-Money Laundering Roadmap

The European Commission has published a Roadmap concerning future anticipated steps in its "new comprehensive approach to preventing and combating money laundering and terrorism financing".

The Commission states in the Roadmap that the *"package adopted by the Commission in July 2019 highlighted a number of deficiencies in the implementation of the EU anti-money laundering framework"* and that "*even full implementation of the latest anti-money laundering provisions introduced by the 5th AML Directive…would not remedy the current weaknesses"*.

According to the European Commission: "more harmo*nisation at EU level, and possibly central EU mechanisms/bodies to strengthen the preventive framework in light of the cross-border nature of much money laundering in the EU and of the integration of the internal market."* are needed.

The Roadmap sets out that a policy communication will be issued in the coming months setting out the areas where further EU action will be taken, which will form the basis of future proposals of the Commission. Extensive consultation with stakeholders will also take place in 2020, with a view to present new policy initiatives in early 2021. Feedback can be submitted on the current Roadmap until 11 March.

6. OECD Release Transfer Pricing Guidance on Financial Transactions

The OECD has released Transfer Pricing Guidance on Financial Transactions, further to follow-ups in BEPS Action 4 and Actions 8 - 10. It is the first time the OECD's transfer pricing guidance has included guidance on the transfer pricing aspects of financial transactions. The guidance aims to improve consistency in interpreting the arm's length principle and reducing double taxation and disputes.

7. EU Update "Blacklist" of Non-Cooperative Jurisdictions

The EU has revised its blacklist of jurisdictions considered non-compliant for tax purposes. At an ECOFIN Council meeting on 18 February, ministers agreed to add Cayman Islands, Palau, Panama and Seychelles to the EU's blacklist. 16 jurisdictions (Antigua and Barbuda, Armenia, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cabo Verde, Cook Islands, Curaçao, Marshall Islands, Montenegro, Nauru, Niue, Saint Kitts and Nevis, Vietnam) reportedly implemented the required reforms to comply with EU's tax good governance criteria and were removed from Annex II.

Commenting on behalf of the EU Presidency, Croatia's Finance Minister Zdravko Marić said of the developments: "*The work on the list of non-cooperative tax jurisdictions is based on a thorough process of assessment, monitoring and dialogue with about 70 third country jurisdictions. Since we started this exercise, 49 countries have implemented the necessary tax reforms to comply with the EU's criteria. This is an undeniable success. But it is also work in progress and a dynamic process where our methodology and criteria are constantly reviewed.*"

8. Tax Dispute Resolution: OECD Releases Further Stage 1 Peer Reviews

In the framework of the BEPS Action Plan, and steps undertaken under BEPS Action 14 concerning the improvement of tax dispute resolution mechanisms, the OECD has now released the results of further Stage 1 peer reviews which assess the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project.

The peer reviews published concern the jurisdictions of Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia. BEPS Action 14 seeks to improve the tax-dispute resolution mechanisms via the Inclusive Framework peer-review process, and give targeted resolutions as outcomes of the peer review which are then followed up in Stage 2 of the Peer Review process.

9. Mali Joins the Global Forum on Tax Transparency

In February, Mali became a member of the Global Forum on Tax Transparency and Exchange of Information for Tax Purposes, becoming the 161st jurisdiction to join. The Global Forum on Tax Transparency members aim to address tax evasion by implementing measures and standards agreed at international level in relation to transparency and exchange of information, both on request and through automatic exchange of information processes. Members of the Global Forum are also subject to Peer Review assessments as concerns their compliance with the minimum standards on transparency and exchange of information.

10. OECD Releases IT Tools for Exchange of Information

The OECD has released IT tools and guidance which are intended to assist with the process of implementing the Treaty Relief and Compliance Enhancement (TRACE), and to encourage wider usage of the OECD Common Transmissions System used for the exchange of information between tax administrations.

The TRACE IT-tool allows withholding tax relief to be claimed at source, and CTS facilitates exchange of Common Reporting Standard information, Country-by-Country Reports and Tax Rulings, and will be extended in 2020 to be used for other on-request and spontaneous exchanges.

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BRUSSELS I **MARCH 2020**

1. Message from the CFE Executive Board on the COVID-19 Impact

As each and every one of us is impacted by the alarming spread of COVID-19 and how it is affecting our lives, the CFE Executive Board had, regretfully, taken the difficult decision to cancel the CFE Annual Forum, the General Assembly and all the Technical meetings in April.

At present, it is uncertain what the next phases of the coronavirus outbreak will look like, and what measures will need to be taken. However, please rest assured that we will closely monitor and evaluate the situation, and keep you updated on whether there will be any impact on the other CFE events that are planned for this year. At this time, our priority is the safety and wellbeing of our members, our staff and our partners. We have put in place a remote working scheme for our staff, in accordance with the applicable public health measures in Belgium, and are conducting our meetings via video and teleconference.

To the extent possible given these circumstances, the CFE Board together with the CFE Team continue to work on the existing projects and focus on relevant new technical publications and policy developments, in close conjunction with the Member Organisations and in synergy with the work of the EU institutions and the OECD. We encourage you to visit the CFE website and our social media channels (Twitter, Linkedin) to stay informed about the most recent CFE technical work and publications. As ever, the CFE Brussels Team is available to work with you on relevant tax technical or policy matters, and to assist you with any queries you may have.

We will continue to keep you abreast of developments in the CFE agenda in the period to come.

2. OECD's COVID-19 Taxation Measures Toolkit

The OECD has published a Toolkit containing the details of taxation and financial measures taken by governments around the world in response to the COVID-19 outbreak. A global reference document setting out the measures taken by tax administrations worldwide has also been created by the Forum on Tax Administration.

The OECD has also created a dedicated webpage concerning the COVID-19 outbreak, providing information and country profiles on the spread of the virus, and recommended responses concerning a variety of policy areas.

Pascal Saint-Amans, in a blogpost stated that *"one of the few certainties is that tax policy will play an important role in the immediate response of governments to support individuals and businesses, as well as in future rounds of policy action, including to rebuild our economies, which will ultimately take place once the health crisis has been contained. The OECD, working with other international organisations, will deploy all its data gathering power and analytical capacities to help governments across the world."*

The OECD recommends a range of tax policy measures be employed, such as more generous welfare and income support payments, deferral or waiver of employer and self-employed social security contributions, tax concessions for those working in health and emergency services, deferral of VAT and custom duties payments, expediting the payment of refunds, deferring or waiving taxes, or increasing loss carry-forward provisions.

3. EU COVID Response

In March, the European Commission adopted a Temporary Framework concerning State aid measures to assist Member States in dealing with the economic impact of the COVID-19 outbreak. To minimise the economic impact of the COVID-19 outbreak, the Framework allows Member States to provide aid by: providing grants, selective tax advantages, and advance payments of up to 800,000 Euro; providing State guarantees for loans taken by businesses; subsidising public loans to companies, putting in place safeguards for banks providing State aid to the economy; and providing short-term export credit insurance.

The EU Commission also published a Communication setting out a coordinated economic response of the European Commission to the COVID-19 outbreak. To minimise economic impact of the COVID-19 outbreak, the EU through its coordinated response will work with Member States to establish means to compensate sectors for losses incurred, to ensure SMEs are provided with liquidity urgently needed, to establish funds to be made available to counter the effects of the virus on employment, and have encouraged Member States to make full use of State Aid provisions to support national support measures

The European Council published a statement setting out their commitment to take the all necessary steps to overcome the COVID-19 crisis. In the statement, the European Council reiterates the measures taken to assist Member States in dealing with the economic impact of the COVID-19 outbreak, including measures in relation to limiting the spread of the virus, to ensuring the provision of medical resources and to minimise the economic impact through the Temporary Framework.

In relation to economic measures taken to minimise the economic impact of the COVID-19 outbreak, the Council of the EU have agreed with the Commission assessment that that *"the conditions for the use of the general escape clause of the EU fiscal framework – a severe economic downturn in the euro area or the Union as a whole – are fulfilled"*, noting that *"The use of the clause will ensure the needed flexibility to take all necessary measures for supporting our health and civil protection systems and to protect our economies, including through further discretionary stimulus and coordinated action, designed, as appropriate, to be timely, temporary and targeted, by Member States."*

In addition, a proposal to extend the State aid Temporary Framework has been sent to Member States for consultation by the Commission. The Commission has also temporarily removed from the Short-term export-credit Communication all countries listed in the marketable risk list, in order to ensure public short-term export credit insurance is more widely available.

4. EU Publishes Roadmap Concerning External Tax Good Governance Strategy

The European Commission has published a Roadmap concerning its Action Plan to fight tax evasion and simplify taxation, as well as for its external strategy for tax good governance.

The Roadmap lists the following as steps to be taken concerning tax evasion: strengthening cooperation tools amongst tax administrations at Union level; introducing new digital solutions to move to real time sharing of information and improve data analytics; for tax data to be provided directly to tax authorities from digital platforms (concerning which a legislative proposal is specifically foreshadowed); and improved cross-border recovery and cooperation agreements.

In relation to simplifying taxation, the Roadmap details that the following actions may be taken: the introduction/improvement of mechanisms concerning cross-border tax disputes, the simplification and modernisation of VAT rules and procedures for withholding taxes in investment in the Single Market; the improvement of cooperative compliance; the introduction of IT solutions to levy tax in real time; and the reinforcement of the EU position with third countries, particularly by way of the external strategy for tax good governance, which may include defensive measures being introduced, technical assistance being offered or agreements being made with third countries.

The Commission will publish the Action Plan together with its initial legislative proposals in June 2020.

5. BEPS Action 6 Peer Review Report on Preventing Treaty Shopping Published

The OECD has released the second Peer Review Report on Action 6 of the Base Erosion & Profit Shifting Project in March, concerning the prevention of granting treaty benefits in inappropriate circumstances. The report contains results concerning aggregate data of the Inclusive Framework jurisdictions as of 30 June 2019, which then totalled 129 jurisdictions.

The report concerning Action 6 sets out that the majority of the Inclusive Framework jurisdictions are in the process of modifying treaties in order to comply with their commitments made concerning treaty shopping, demonstrating the effectiveness of the BEPS MLI.

6. OECD Publishes Responses to CbCR Consultation

In March, the OECD published comments received in relation to a consultation document published in February inviting input concerning Action 13 of the Base Erosion and Profit Shifting Project, on Country-by-Country Reporting. The review is being carried out pursuant to the BEPS Action Plan, which mandated a review of CbCR under Action 13 in 2020.

The consultation document invited input on whether modifications should be implemented for Action 13 such that additional or different data should be reported, requesting practical experiences and issues with reporting requirements under Action 13, input on the use of the reported data by tax administrations, and on the effectiveness and appropriateness of thresholds and reporting.

7. UK to Proceed with Digital Tax

The UK budget delivered in March confirmed that the UK is proceeding with plans to introduce a digital services tax, which will enter into force in April 2020, notwithstanding US President Trump's administration reportedly having advised the UK government at multiple levels that no free trade deal will be agreed should the tax be passed into law.

The tax will apply to businesses making search engines, social media platforms or online marketplaces available to UK users, including any associated online advertising of that business, which have a global annual turnover over £500 million pounds and over £25 million pounds of turnover attributable to revenue derived from UK users. The tax will apply at a rate of 2% to revenue over £25 million pounds.

This follows Executive Vice-President of the European Commission, Margrethe Vestager, having confirmed that nationally imposed digital taxes do not fall short of the EU State aid rules, as argued by some commentators, and the decisions of the European Court of Justice in Cases C-323/18, *Tesco-Global Áruházak Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli* and C75/18, Vodafone Magyarország Mobil Távközlési Zrt. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága, in which it was held that steeply progressive turnover taxes which targeted the retail and telecommunication sectors, and largely affected nationals of other Member States or by companies that have their registered office in another Member State, were not discriminatory.

8. Global Forum Holds First Peer Review Meeting

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes from 16 to 18 March held the inaugural meeting of their recently established Automatic Exchange of Information Peer Review Group (APRG), concerning the Standard for Automatic Exchange of Financial Account Information in Tax Matters. The meeting was held remotely.

Issues discussed included confidentiality and data security, the development of a framework to assist in establishing the gaps in a jurisdiction's legal framework and how peer reviews concerning the Standard will conclude whether jurisdictions have implemented the Standard effectively.

The Global Forum is the flagship body for ensuring the implementation of the internationally agreed standards of tax transparency and exchange of taxation-relevant information among tax administrations. Over 4,500 bilateral exchanges of information have taken place, in line with the Automatic Exchange of Information Standard, with the exchange containing information concerning financial accounts taxpayers hold outside their jurisdictions.

9. EU Opens Accession Talks to North Macedonia & Albania

In March, the European Council published a statement which endorses the Council of the EU conclusions concerning the Expansion of the EU, in which the Council of the EU decided to open accession negotiations with the Republic of North Macedonia and Albania.

10. Portugal Ratifies OECD MLI

Portugal has deposited its instrument of ratification to 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. It now extends to over 1,650 bilateral tax treaties.

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