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Opinion Statements

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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

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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

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[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

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[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

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[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

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[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.

CFE tax advisers europe

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.

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/

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.

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*.

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/

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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 riaditel'stvo 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.

CFE tax advisers europe

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/

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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)

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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/

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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.

CFE tax advisers europe

OPINION STATEMENT

Opinion Statement PAC 1/2020 Calling for an EU Action Concerning the Mandatory Reporting of Cross Border Arrangements Imposed by Council Directive EU/2018/822 ("DAC6")

Issued by the CFE Professional Affairs Committee
Submitted to the European Institutions on 22 April 2020

CFE Tax Advisers Europe is a Brussels-based association representing European tax advisers. Founded in 1959, CFE brings together 30 national organisations from 24 European countries, associated via the Global Tax Advisers Platform with more than 600,000 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 Wim Gohres, Chair of the CFE Professional Affairs 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/

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Statement

This CFE statement concerns the Council Directive EU/2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, commonly referred to as “DAC6”, which entered into force on 25 June 2018.

CFE Tax Advisers Europe is supportive of the policy objectives of the Directive and we recognise the importance of ensuring effective and uniform application of the mandatory disclosure rules across the European Union. Effective application of EU law depends on Member states implementation and the ability of addressees of the rights and obligations set out in EU law to adhere to them.

Due to the extraordinary consequences of the Covid-19 outbreak which results in severe disruption in the life of citizens, as well as business activity across the European economy, we consider that many intermediaries and taxpayers will face exceptional challenges and business pressures in seeking to fulfil the obligations arising out of the Directive. Equally, Member states’ tax administrations will be similarly hampered to issue guidance specifying the practical application of the rules.

As a result of the consequences arising out of the Covid-19 outbreak, as well as various public health measures such as quarantine/ home confinement imposed by governments, we are urging an EU action in this respect. Considering that the DAC6 obligations for intermediaries, as enacted by Member states laws[1], arise out of an EU directive, we would welcome a positive intervention by the Council of the EU and the European Commission to mitigate these challenges within the legislative framework in place. Such an EU-wide action would be particularly appreciated in times of crisis and would allow leniency by Member states in delaying the enforcement of penalties related to compliance with the national DAC6 implementing legislation. Our aim is to support high quality reporting in a commercial framework.

Mainstream Reporting under DAC6 – Article 8ab(1) and Article 8ab(2)

As set out in the Directive, reporting needs to take place within 30 days as of the reportable cross-border arrangements being made available or being ready for implementation, or after the first step of implementation has been taken, whichever happens first.

At the moment, this is an enormous challenge and we envisage that it will continue to be so. Intermediaries need to work closely with taxpayers in order to identify, track and follow potential cross-border arrangements falling within the material scope of DAC6. Our members strongly believe that the deadline of 31 August 2020 now presents exceptional challenges, given the severe disruption of life as a result of Covid-19 due to public health measures and government restrictions of various nature. Apart from the constraints of remote working, the professionals represented by our members, and their

[1] Some Member states have not yet implemented the Directive, yet intermediaries might be subject to the obligations set out in EU law

clients, may already suffer from the inevitable, exceptional increase in staff absences due to illness which requires hospital treatment or isolation.

In addition, tax administrations across Member states are similarly hampered in their task of providing essential guidance to help taxpayers and intermediaries to understand what transactions are reportable under this very broad legislation.

Equally, Member states' tax administrations will be unable to issue guidance on the content requirements for taxpayers and intermediaries regarding the periodic report on marketable arrangements and the update of the client list, as required by Article 8ab(2) of the Directive.

One-off Reporting – Article 8b(12)

As set out in Article 8b(12), if a reportable cross-border arrangement takes place between 25 June 2018 and 30 June 2020 that arrangement has to be reported before 31 August 2020.

Such as task of retroactive reporting seems particularly challenging under the present circumstances. Our members will thus be obliged to perform scrutiny of past transactions potentially without being able to reach key client contacts or a tax administration officials who may be unable to provide the necessary input due to government-imposed restrictions.

Significantly, there are severe penalties imposed for non-adherence to these obligations, which under the present circumstances would potentially amount to breach of the principle of proportionality of penalties, as guaranteed by primary EU law, i.e. Article 49 of the EU Charter of Fundamental Rights, if the penalties are applied without regard for the exceptional circumstances.

Furthermore, in accordance with Article 51 of the Charter, Member states when implementing EU law, fall within the scope of application of the Charter and are therefore obliged to observe and protect these constitutional principles.[2]

Leniency on the DAC6 Penalties Framework Agreed at EU Level

We are calling for an EU action to give time and appropriate opportunity to our members, taxpayers and tax administrations to be able to fully administer their respective obligations arising out of the Directive in times of crisis. An action at EU level would be the most effective means of aligning outcomes across the Single Market. As such, we would in particular welcome a public commitment by the Member states' governments and the EU that penalties would not be enforced for a certain period of time.

The challenges for us all arising from the Covid-19 outbreak are clearly unprecedented, which in absence of such leniency, would impede adherence to the legislation. Such leniency on the penalties enforcement, and certain deferral of the mandatory reporting obligations agreed at EU level would

[2] Following the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights has the legal status of primary EU law, equal to the European Union treaties, and hence takes precedence over Directives and any conflicting national law

also help make the compliance effective and efficient by preventing underreporting as much as possible.

Guidance on Practical Solutions in Times of Crisis

CFE would welcome guidance for the concerned stakeholders on practical solutions within the current legal framework, in order to ensure a uniform application across Member states in time of crisis.

Consistent implementation of DAC6 in all EU Member States is required to ensure compliance with EU law, minimise the unnecessary excessive administrative costs and limit misperception for taxpayers and service providers about their responsibilities.

Given the impact of this crisis, however, we strongly urge action at EU level in order to achieve full consistency across the EU, in particular because some EU Member States have deviated from EU law by supplementing the Directive with their own policy preferences.

Concluding Remarks and Acknowledgment of Taken Actions

We would welcome an action by the European Commission and the Council of the European Union/ Member States as swiftly as possible in order to ensure consistent, unimpeded and correct application of the Directive across the EU, taking into account the extraordinary disruption and consequences for the European Union as we contend the impact of Covid-19.

CFE Tax Advisers Europe and its Member organisations stand ready to discuss these issues with the European institutions, as well as other relevant stakeholders. As ever, we would welcome any means of having a dialogue and opportunities to contribute to better and effective application of EU law.

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OPINION STATEMENT

Opinion Statement TTC 1/2020 on Tax Administration Data Collection Practices & Digitalisation of Tax Administration Processes

Prepared by the CFE Tax Technology Committee
Submitted to the EU Institutions on 30 June 2020

This Opinion Statement discusses the implications of the digitalisation of tax administration processes, in particular with regard to the collection and protection of personal data by tax administrations.

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 Mr Ian Hayes, Chair of the CFE Tax Technology Committee or Brodie McIntosh, Tax Policy Analyst, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

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1. Introduction

The CFE Tax Technology Committee was established in January 2018 in response to CFE's recognition of the importance of digitalisation in the administration of taxes and the performance of the tax profession. It was and is accepted that digital transformation is, and will henceforth be, at the heart of all fiscal activity.

The evolutionary processes of digitalisation are well underway. Revenue authorities are pursuing change in differing ways under the collective banner of Making Tax Digital. Unfortunately, there are no uniform standards and taxpayers and their advisers must operate eclectically depending on the authority to which they report.

We believe that the natural forces of globalisation will act as a positive agent in coalescing over time diverse systems and software. We see our role as primary participants with revenue administrations, software companies and tax advisers in driving this evolution since we accept the inevitability of the process. By our proactive, co-operative participation, we see our commitment as working for the continuous improvement of the process and the retention of the rights and responsibilities of all parties.

2. Background

This, our first Opinion Statement, picks up on the OECD blogpost on Covid 19. The post emphasises that

"Fighting a pandemic while minimising the associated economic costs calls for appropriate digital infrastructure for the design and enforcement of containment measures, as well as to ensure access by the population and enterprises to critical government services."

The post underlines the importance of delivering public services and collecting revenue in achieving progress in the digitalisation process.

We agree with this statement.

CFE welcomes the opportunities for efficiency of tax administration that digitalisation provides. We are wholly focused on the role of tax professionals, managing the risks posed to taxpayer and administrator alike by the development of Artificial Intelligence, and exploiting the benefits direct interaction between taxpayer and revenue authority brings.

In particular, the Tax Technology Committee sees the following as vital issues to explore concerning information flow as part of digital transformation

- Maintaining the privacy of taxpayer data
- The storage of data
- Cybersecurity and the protection of personal data.
- Digitalisation development resources - the availability of personnel and capital funding sufficient both for tax administrations and taxpayers.

- Administrative and investigative powers of tax administration.
- Data analytics, especially when subcontracted to the private sector.

3. Privacy Concerns Surrounding the Digitalisation of Tax Administration

The benefits to tax administrations of digitalisation are clear: digitalisation should increase rates of compliance, streamline and improve efficiency of collection and refund processes, and ideally Improve taxpayer satisfaction in the process. It reduces risk of error by humans by reducing the number of instances of interaction. However, data protection rules often apply differently for revenue authorities and taxpayers, raising many issues concerning the privacy of data collection.

Digitalisation of tax processes highlights the importance of personal data protection and privacy as we progress in this digital age. It is now that taxpayer rights need to be transposed and embedded in the digital world.

The Tax Technology Committee is of the view that, in these early days of the Digital Age, we need a clear code governing the development process, the uses to which technology is put and how taxpayer' rights may be preserved in a digital environment.

4. Cross-Border Sharing of Data by Tax Administrations

Concerns arise from the collection of data by tax administrations. They are compounded by automatic and requested data sharing between national tax administrations. This sharing of data threatens the expectation of privacy of a taxpayer, and raises issues concerning whether there should be some limits and oversight on the sharing of data.

The Committee believes there is a need for a digital charter and a protocol for data protection in cross border exchange. Security is an inherent aspect of any digital development worth considering and, currently, most taxpayers make disclosures subject to the expectation of privacy. We accept there are some States where public disclosure of taxpayer revenue occurs, but, even in those countries, non-disclosed information is private, and all taxpayers are aware of the extent of public disclosure.

Allowing access to or requiring disclosure to third party administrations of private and, possibly privileged data without the consent of the owners of the data should only be possible if properly regulated.

We think it is of vital importance that, where there is cross border exchange of information, participating revenue administrations adhere to a multilateral agreement which guarantees levels of data security equal to those applying in the State of data provision.

5. Exchange of Data under the EU Directive of Administrative Cooperation

The tax transparency developments at EU legislative level have been welcomed by CFE. Council Directive EU/2018/822 amending Directive 2011/16/EU as regards mandatory automatic exchange

of information in the field of taxation in relation to reportable cross-border arrangements, commonly referred to as "DAC6", poses significant questions as to security of cross-border data sharing, privacy and proportionality of use of taxpayers' data. The Directive enables Member States to address aggressive tax planning arrangements, to undertake adequate risk assessments and to triage scarce revenue administration resources by carrying out risk-based and targeted tax inspections. Such effective disincentives for engaging into aggressive tax planning and the deterrent effect are supplemented by establishing and EU-wide central directory of taxpayer data to ensure the effectiveness of the Directive.

This policy is explicitly allowed under European Union's General Data Protection Regulation (GDPR): the EU and Member states are allowed to restrict rights and data quality principles in order to safeguard important interests, such as taxation, which is explicitly listed as a justification for such restriction under Article 23 GDPR.

Considering the materially broad scope of reporting under DAC6 the issues of proportionality inevitably arise. The EU needs to ensure that the data is being used for legitimate, necessary and proportionate purposes by preventing 'fishing expeditions' of tax authorities. In reality, these standards and practices will differ among member states, which is a significant concern regarding protection of taxpayers rights.

In order to guarantee the proportionality of the use of taxpayer data, it is settled case-law of the Court of Justice of the European Union (ECJ) that transparency and privacy of data are of equal value in a Union based on rule of law.

The Court has explicitly stated as concerns the interpretation of EU law in this area that processing of personal data must be relevant and proportionate relative to the purpose for which it is stored (Schrems) and that the objective of achieving transparency does not routinely take precedence over the right to protection of personal data, even when important economic interests are at stake (Schecke).[1]

CFE calls on the European Union and Member states to carefully consider procedural guarantees when implementing the DAC6 Directive as a matter of national tax procedural law, as well as the retention period and robustness of data storage. Such mechanisms will ensure implementation in line with the proportionality principles elaborated by the Court of Justice concerning mass exchange, storage and access to data.

6. Storage of Data and Cybersecurity

The collection of data by tax administrations raises concern for the cybersecurity of the data, what are the best means of securing it, how and where it will be stored, who will have access to it and how confidentiality and privilege, both in respect of cross border exchange of data and encrypted data, can be preserved.

[1] Case C-362/14 Maximilian *Schrems* v Data Protection Commissioner; Joined Cases C-92/09 and C-93/09 Volker und Markus *Schecke* GbR (C-92/09) and Hartmut Eifert (C-93/09) v Land Hessen [2010], ECR I-11063

Digital security is a key element in the services provided by a tax professional. Advisers could not work without giving their clients assurance that all details of their financial and fiscal affairs are secure and protected from cyber-attack. Insurance and technological procedures provide additional assurance but, in the event of a breach, there will always be a question of negligent behaviour by the advisor and, in particular, that not sufficient attention has been given to data security.

Tax advisers must continuously address, therefore, the issue of security for their clients' data, and have an active and important participating role in the process of digitising tax systems. In doing so, the exposure to cybercrime given by unregulated cross border disclosure of client data by revenue administrations is an area of risk which, whilst outside the advisers control, exposes all other controls for security to a risk of uncontrolled breach.

Blockchain is a shared ledger of transactions between parties in a network, specifically not controlled by a single central authority. We are of the view that a disclosure system fashioned around a blockchain network could go a long way in mitigating this risk to data security and provide an acceptable level of tax certainty.

We do though reiterate that, in order to safeguard the interest of taxpayers, it is important to have oversight regulation.

The Committee join with and support the Forum on Tax Administrations of the OECD and the European Blockchain Partnership, in their aims

''to develop a trusted, secure, and resilient European Blockchain Services Infrastructure (EBSI) meeting the highest standards in terms of privacy, cybersecurity, interoperability and energy efficiency, as well as fully compliant with EU law"

and that

"the ambition of the Partnership is to make this trusted infrastructure accessible to support digital services deployed by public and eventually in the future also private actors.''

The Committee intends that tax advisers will play a full and active role in the development of Blockchain systems and will strive to make those systems fit for purpose, and respectful of taxpayers' rights and needs.

The CFE's Tax Technology Committee publishes this paper not just as a further contribution to the debate around principles of taxation and use of data, but also as a declaration of our intent to support and lead the role of tax professionals in the exciting and ongoing digital transformation we are now experiencing.

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OPINION STATEMENT

Opinion Statement CFE 1/2020 on the potential Commission initiative to strengthen the Directive on Administrative Cooperation in Direct Taxation

Prepared by the CFE Fiscal Committee
Submitted to the EU institutions on 3 April 2020

This Opinion Statement discusses the EU Commission consultation undertaken in Q1 2020 concerning a potential initiative to strengthen the Directive on Administrative Cooperation in Direct Taxation, concerning the ability of tax administrations across the EU to obtain tax-related information on taxpayers who generate income via the digital platform economy.

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 Policy Analyst, at info@taxadviserseurope.org. For further information regarding CFE Tax Advisers Europe please visit our web page http://www.taxadviserseurope.org/

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This Opinion Statement concerns the Commission consultation stemming from its Inception Impact Assessment on a Proposal for a Council Directive amending Directive 2011/16/EU as regards measures to strengthen the exchange of information framework in the field of taxation. CFE Tax Advisers Europe welcomes the opportunity to contribute to this public consultation of the European Commission. This statement supplements the CFE responses submitted to Commission's questionnaire.

The CFE notes that the consultation and Inception Impact Assessment examine in particular the ability of tax administrations across the EU to obtain tax-related information on taxpayers who generate income via the digital platform economy. The Commission states in its Inception Impact Assessment *"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."*

The CFE supports the European Commission's policy approach for increased transparency and efforts to strengthen the integrity of the tax systems, and the pivotal role of the European Union in seeking to reduce instances of tax avoidance. However, the CFE observes that digitalisation continues to be an evolving process and an opportunity for society at large. As such, the digitalisation of business models by the use of digital platforms and the consumer value it brings, should be welcomed. Excessively burdensome compliance and disclosure rules at an EU level could potentially decrease the attractiveness of the EU Internal market, which would run counter to efforts at making the EU the most dynamic and innovative market in the world.

Tax Avoidance Risks Associated with Digital Platforms

The CFE accepts that there are risks of tax avoidance that can arise from the use of digital platforms. However, the CFE also observes that risks also arise from other methods of selling of goods and services. The CFE does not believe that the risk of tax avoidance is inherently higher for businesses using platforms to sell their goods or services, than for other digitalised businesses or for businesses where payment is made in cash. The CFE does not believe that it is clear that there is any higher risk of tax avoidance simply because a seller is using a digital platform.

The CFE does accept that use of a digital platform may provide easier access to a client base, and that the increased ability to provide goods and services by sellers may increase tax avoidance for that reason. In particular, it may make it easier for non-compliant businesses based outside the Union to make supplies of goods and services to consumers who are resident in the Union. That obviously raises issues about how compliance can be ensured when a business in not established within the Union. However, particularly when a business is established in the Union, the use of digital platforms

by sellers can make it easier for tax authorities to discover more easily persons using these platforms and detect and investigate tax avoidance in this manner. In relation to supplies by businesses established within the Union, the CFE is of the view that the risk or actuality of tax avoidance should in principle be no higher than the risk of those not using a digital platform to market or sell similar goods and services.

Reporting Requirements Associated with Digital Platforms and Joint Audits

If specific reporting requirements were introduced concerning digital platforms, the CFE accepts that a harmonised approach to reporting is to be preferred. The CFE would equally point out that harmonised measures do not necessarily reduce compliance burdens, and can indeed increase complexity and compliance burdens. This can be illustrated by the recent quick fixes to the VAT system. A number of businesses have complained that the new harmonised procedures in relation to call-off stock are more onerous than the unharmonized provisions that previously existed in some Member States and that they are administratively so burdensome that the procedures are not attractive to use in practice. For those reasons, they may no longer want to use the harmonized procedures in circumstances where they may have used the simpler procedures that had previously existed in some Member States.

Problems are also caused by the fact that directives are not necessarily implemented in a harmonised manner. The CFE believes it would be advantageous to introduce any reporting requirements by way of a Regulation at EU level agreed by Member States to minimise implementation issues. Any measures should also be implemented in a manner that seeks to ensure that they do not impose disproportionate burdens on businesses.

In relation to joint audits, the CFE has concerns about making joint audits mandatory at the request of either the taxpayer or another Member State's tax administration. This is partly because of the resource implications of such requests on a tax administration that in consequence of the request will then be required to undertake an audit that it would not otherwise have undertaken. It may oblige under-resourced tax administrations to carry out unnecessary audits. Similarly, it may also encourage overly zealous tax authorities to carry out cross-border audits as a fishing expedition. However, in cases where a joint audit is undertaken, the CFE does consider that it would be desirable for the joint audit process to be concluded by a single report containing a summary of the facts and the legal consequences drawn from the facts, as agreed between the two tax administrations.

If harmonised reporting were to be required within the EU, the CFE also believes that there ought to be certain exemptions to the reporting requirements, such as exemptions for start-ups and for platforms and/or sellers making supplies under a certain monetary threshold. Additionally, the CFE is of the view that certain services should be exempt, such as provision of professional services where those professionals are already subject to some sort of oversight by a professional standards body.

Additionally, reporting requirements should also not be imposed where any reporting obligation would be in breach of professional privilege under national laws.

Before new EU-wide reporting requirements are introduced on top of what are already complex compliance obligations, the CFE also considers that further time should be allowed to assess the effectiveness of recently introduced EU anti-avoidance and reporting legislation, including the EU Anti-Tax Avoidance Directives ("ATAD 1 & 2"), the Directive on administrative cooperation on advance cross-border rulings ("DAC 3"), the Directive on administrative cooperation on country-by-country reporting ("DAC 4"), the Directive on Double Taxation Dispute Resolution Mechanisms and the Directive as regards mandatory automatic exchange of information in the field of taxation in relation to cross-border arrangements ("DAC 6"). The CFE are of the view that the EU should continue to facilitate administrative cooperation between Member States to tackle tax abuse, by encouraging Member States to use the existing instruments under EU law for cooperation and exchange of information, tax rulings, GAARs, the Parent-Subsidiary Directive, and the Anti-Tax Avoidance Directive.

Notwithstanding the above, CFE expects that tax advisers will continue to assist their clients with fulfilment of existing and newly introduced disclosure obligations, where applicable. Tax adviser members of the national associations under the umbrella of the CFE stand ready to continue making complex tax systems work.

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Questionnaires

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CFE Tax Advisers Europe –Questionnaire on Inheritance Tax

Organisation providing comments:

Question	**Answer**	**Additional comments/ Concerns**
Is there inheritance tax in your country?		
Who pays the inheritance tax?		
What are the exemptions (if any) to the tax? What are the conditions of the exemption(s)?		
What are the thresholds and rates of taxation?		
Are family relationships relevant for the purposes of the tax or are there any rules which provide for tax exemptions for immediate relatives? If so, are there any tax exemptions/limits/conditions of applying the exemption?		
Is the inheritance tax due multiplied by the previous net wealth of the heirs?		
Does any legislation in your country provide for the avoidance of double taxation of inheritance?		

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Are there any special rules relating to inheritance of an enterprise?		
Does any domestic law in your country provide for the avoidance of double taxation on **foreign** inheritance?		
Is it possible to deduct inheritance tax paid abroad? If so, is there any well-established juridical precedent for this?		
Is there any tax exemption for foreign inheritance, provided that it was taxed in the country of origin?		
Has your country concluded any agreements on avoidance of double taxation on inheritance? How many agreements has your country concluded, and are they in force?		
If such agreements exist, have any been modified recently in terms of avoidance of double taxation of foreign inheritance?		
Any other comments:		

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CFE'sTax Top 5

KEY TAX NEWS OF THE WEEK

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.

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.

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.

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."*

The selection of the remitted material has been prepared by
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia

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CFE's Tax Top 5

KEY TAX NEWS OF THE WEEK

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.

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.

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.

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.

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.

The selection of the remitted material has been prepared by
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CFE's Tax Top 5

KEY TAX NEWS OF THE WEEK

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.

Reminder: Applications Open for the CFE *Albert J. Rädler* Medal Award

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KEY TAX NEWS OF THE WEEK

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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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.

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.

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.

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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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.

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.

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.

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.

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.

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KEY TAX NEWS OF THE WEEK

BRUSSELS I 24 FEBRUARY 2020

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.

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.

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.

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.*"

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.

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KEY TAX NEWS OF THE WEEK

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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.

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.

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.

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.

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KEY TAX NEWS OF THE WEEK

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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.

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."*

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.

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.

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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KEY TAX NEWS OF THE WEEK

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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."*

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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KEY TAX NEWS OF THE WEEK

BRUSSELS I 23 MARCH 2020

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.

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.

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.

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.

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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KEY TAX NEWS OF THE WEEK

BRUSSELS I 30 MARCH 2020

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.

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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OECD Issues Guidance on Cross-Border Tax Issues Raised by COVID-19

The OECD has published guidance analysing tax treaty implications concerning certain tax issues raised by circumstances surrounding the COVID-19 outbreak.

The guidance examines issues such as potential creation of a permanent establishment or change in the place of effective management on the basis of a cross-border employee carrying out duties remotely, as well as other issues concerning cross-border workers and changes in the residence status of workers.

Pascal Saint-Amans, in a blogpost concerning the guidance stated *"The exceptional circumstances of the COVID-19 crisis call for an exceptional level of coordination and co-operation between countries, notably on tax issues, to mitigate the potentially significant compliance and administrative costs for employees and employers. The OECD encourages countries to work together to alleviate the unplanned tax implications and potential new burdens arising due to effects of the COVID-19 crisis."*

The OECD is examining other issues raised by tax measures concerning cross-border workers, and will continue to update the blog and website with information and guidance.

Luxembourg to Limit Deductibility of Interest & Royalties for EU Blacklisted Jurisdictions

The Luxembourg government has approved draft legislation which, if passed, will limit the deductibility under Luxembourg corporate income tax rules of interest and royalties owed of companies registered in jurisdictions which are on the EU List of Non-Cooperative Jurisdictions for Tax Purposes.

This follows from the Council of EU report approved in December 2019, which detailed 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. The report recommended Member States apply at least one of the measures, which included non-deductibility of costs, CFC rules, withholding tax measures and denial of participation exemption on profit distribution.

The draft legislation will now proceed through the regular legislative process. The legislation will apply as from 1 January 2021.

Platform for the Collaboration on Tax Create Website to Assist Developing Countries Strengthen Tax Systems

The Platform for Collaboration on Tax, a joint initiative of the International Monetary Fund, the Organisation for Economic Co-operation & Development, the United Nations and the World Bank Group, have now launched a website which aims to disseminate information to assist developing countries to strengthen tax systems and mobilise domestic revenue.

The website contains toolkits, guidance, reports, relevant tax news as well as an extensive database concerning resource mobilisation activities and projects of partners of the Platform for Collaboration on Tax.

The website aims to assist with achieving the Sustainable Development Goals by 2030 and the Addis Ababa Action Agenda.

EU Commission Temporarily Waives VAT & Custom Duties on Medical Equipment Imports

The EU Commission has approved a 6-month waiver of all customs duties and VAT due on the import of medical equipment. The measure will cover protective equipment such as masks, gloves and gowns, as well as testing kits, ventilators and other medical equipment.

Commissioner for the Economy, Paolo Gentiloni, stated: *"In this emergency it is vital that medical equipment and devices get quickly to where they are needed. By waiving customs and VAT duties on imports of these products from outside the EU, the European Commission will help make those products more accessible. I want to express again my deep respect and gratitude to health workers across Europe. Today's measure should help them receive the equipment they need to protect themselves and continue saving lives."*

The decision was taken after all Member States submitted requests to waive the VAT and import duties, at the invitation of the EU Commission to do so. The measure will initially apply for 6 months, with the possibility of being extended.

Forum on Tax Administration Publishes Global Reference Document on COVID-19 Tax Measures

A global reference document setting out the measures taken by tax administrations worldwide has been created by the Forum on Tax Administration, containing detail of all taxation and financial measures taken by governments around the world in response to the COVID-19 outbreak.

The document will be updated on a regular basis and has been created in order to assist tax administrations in developing their own national tax measures responding to the COVID-19 crisis.

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KEY TAX NEWS OF THE WEEK

BRUSSELS I 14 APRIL 2020

German Upcoming EU Presidency Tax Priorities: Return of the FTT

Germany, who will hold the Presidency of the Council of the European Union from 1 July 2020 to 31 December, has significant tax priorities for its upcoming Presidency period.

A German EU Presidency planning document seen by CFE, entitled "*Präsidentschaftsprogramm 1. Juli bis 31. Dezember 2020 – Unser Weg: innovativ, gerecht, nachhaltig*", indicates that the EU Financial Transaction Tax will be a main focus for the tax agenda of the Presidency. A meeting that had been scheduled for March to further discussions between Finance Ministers on the FTT was postponed due to the Corona virus outbreak.

In addition, other specific taxation priorities include fair taxation of the digital economy, reducing tax evasion, simplification of taxation within the EU and increased cooperation between European Member States' tax administrations.

Under the Croatian EU Presidency, the European Commission plans to launch an Action Plan on the fight against tax fraud, scheduled for 10 June, coinciding with the G7 Summit in the US (10-12 June) and the European Business Summit (11-12 June).

Eurogroup Agree on 500 Billion Euro COVID-19 Recovery Package

On 9 April, EU Finance Ministers agreed on a half-trillion Euro recovery package, to be administered by the European Stability Mechanism, which will provide targeted relief for EU economies in response to the COVID-19 outbreak.

The package will provide for precautionary credit lines, an interim solidarity instrument to provide loans to Member States from the EU which aim to protect jobs and employees amidst the COVID-19 crisis. In addition, a pan-European guarantee fund will be implemented by the European Investment Bank, to support EU businesses, in particular SMEs.

European Council President Charles Michel in a statement announcing the agreement, stated that *"the agreement of the Eurogroup is a significant breakthrough. More than half a trillion Euros are now available to shield European Union countries, workers and businesses. With this unparalleled package we shoulder the burden of the crisis together. This compromise is aimed at quick targeted relief."*

A temporary Recovery Fund, which would aim to ensure economic recovery in Member States, as well as other technical aspects concerning the agreement, will be discussed further in a videoconference of the European Council which will take place on 23 April.

OECD Publishes BEPS Action 14 Dispute Resolution Reports

In the framework of the work undertaken through BEPS Action 14 and the improvement of tax dispute resolution mechanisms, the OECD has now published Stage 2 peer review reports for jurisdictions in the second batch of reviews, assessing the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project and the recommendations for the jurisdictions in the Stage 1 peer review reports.

The published reports concern the jurisdictions of Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden. 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.

Forum on Tax Administration Provides Business Continuity Advice for Tax Administrations

The OECD's Forum on Tax Administration, in collaboration with the Intra-European Organisation of Tax Administrations and the Inter-American Center of Tax Administrations, has published a document setting out business continuity advice for tax administrations in the wake of the COVID-19 pandemic.

The document aims to unite tax administrations through virtual means concerning tax measures implemented to assist taxpayers, as well as to ensure the continuity of tax administration services and to alleviate potential cross-border tax issues.

Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans, reiterated the importance of the FTA's work, stating "*tax administrations globally have a central role to play in supporting taxpayers, governments and the wider economy at this difficult time.*"

Global Forum Transparency & Exchange of Information Peer Review Reports Released

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has published peer reviews concerning the compliance of eight jurisdictions with the international standards for exchange of information and transparency. The peer reviews concern the jurisdictions of Barbados, Brunei Darussalam, Liberia, Macau (China), Peru, the Seychelles, Switzerland and Tunisia.

Of the jurisdictions being peer reviewed for the second time, the jurisdictions of Brunei Darussalam, Macau (China) and Switzerland received ratings of largely compliant. Barbados and the Seychelles were downgraded in their second peer review process from largely compliant to partially compliant. Following their first full review process, Liberia was rated

partially compliant and Peru and Tunisia were rated as largely compliant. Further details concerning the ratings can be found here.

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.

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KEY TAX NEWS OF THE WEEK

BRUSSELS I 20 APRIL 2020

EU Economic & Finance Ministers Hold Videoconference on COVID-19 Economic Impact

On 16 April, EU Finance Ministers held a videoconference to discuss and assess the EU response on the economic impact of the coronavirus pandemic, in particular the half-trillion Euro recovery package agreed by Ministers on 9 April, which will provide targeted relief for EU economies in response to the COVID-19 outbreak.

Ministers stressed the importance of the assistance measures being made available as quickly as possible, and negotiations on the recovery fund to proceed speedily, with Croatian Deputy Prime Minister and Minister of Finance, Zdravko Maric, stating *"The recovery of the European economy poses a major challenge. We will act together in solidarity and deliver solutions which will together enable us to make the progress needed to strengthen the European Union".*

Ministers also agreed to simplify information required for the European Semester for 2020, given the socio-economic impacts of COVID-19. The Spring forecast and country specific recommendations are expected to be published by the Commission in May. In addition, the Ministers issued a statement endorsing flexibility in the banking sector for loans to businesses and households.

OECD Publish Comments on Draft Model Rules for Sharing & Gig Economy

The OECD has published comments received in response to a public consultation document inviting input on draft Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy.

The consultation document invited input on model rules which have been developed with the objective of tax administrations worldwide adopting a uniform set of rules concerning the reporting requirements for transactions and income of platform sellers. The rules have been developed to increase transparency and minimise compliance burdens for tax administrations and taxpayers, in properly recording and taxing activities carried out on digital platforms which may have been previous carried out via the informal cash economy.

Rapporteurs on EU Public CbCR Call for Transparency Requirements for MNEs Receiving State Aid

In a letter addressed to all EU Ministers sitting in the Competitiveness Council, Rapporteurs for EU public Country-by-Country reporting have called for transparency requirements to be impose on multinational corporations receiving State aid.

In the letter, the rapporteurs refer to similar requirements imposed for support measures granted to banks acting Europe in the 2008 financial crisis, stating that *"This measure should now be made mandatory for the targeted multinationals in order for the public to have an oversight on whether companies fairly contribute to the recovery efforts by investing in people and societies within EU countries, while monitoring if those businesses also pay their fair share of tax. We cannot afford, in the eyes of European citizens during the time of crisis of such magnitude, making a mistake of giving a blank check to multinationals without strong accountability and transparency requirements."*

The rapporteurs further call on the Competitiveness Council to progress work on the Commission proposals for public Country-by-Country reporting.

Report on Tax & Fiscal Policy in Response to the Coronavirus Crisis Presented at G20 Virtual Meeting

At the virtual G20 meeting held on 15 April, a report was presented concerning Tax and Fiscal Policy in Response to the Coronavirus Crisis. The report was prepared by the OECD at the request of the Saudi G20 Presidency.

The report details taxation and financial measures taken by governments around the world in response to the COVID-19 outbreak, and a range of tax policy measures that can be employed by administrations to mitigate the impact of the outbreak on economies, and stimulate recovery.

The report emphasises the difficulties in providing economic relief to the most affected households and businesses, and that developing countries will require significant support in ensuring health and fiscal systems in recovering from the impact of the outbreak.

OECD Updates COVID-19 Tax Measures Response Database

The OECD has published an updated version of the database 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.

The selection of the remitted material has been prepared by
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KEY TAX NEWS OF THE WEEK

BRUSSELS I 27 APRIL 2020

EU Commission Considers Leniency for DAC6 Reporting Deadlines

The EU Commission is reportedly considering "a possible adjustment" for deadlines imposed by the EU Directive on mandatory disclosure rules ("DAC6"). This follows on from public requests made by financial and professional association organisations, seeking leniency in the enforcement of penalties and deadlines contained within the Directive due to the extraordinary consequences of the COVID-19 outbreak which have resulted in severe disruption across the European economy.

CFE Tax Advisers Europe in its Opinion Statement on the issue highlighted that many intermediaries and taxpayers will face exceptional challenges and business pressures in seeking to fulfil the obligations arising out of the Directive, and that Member states' tax administrations will be similarly hampered to issue guidance specifying the practical application of the rules. CFE urged a positive intervention by the Council of the EU and the European Commission to mitigate the challenges faced by intermediaries in such circumstances, to allow leniency for Member States to delay the enforcement of penalties related to compliance with national DAC6 implementing legislation.

A spokesperson for the Commission reportedly stated that *"any postponement should thus be of a limited duration and will not affect the start of application of the directive [on July 1, 2020]," the spokesperson said. "It follows that cross-border reportable arrangements made during any agreed deferral period would in any case have to be reported once the deferral period is terminated."*

OECD: COVID-19 an Opportunity for Digitalisation

The OECD has published a blogpost concerning the opportunities for subnational governments to deliver public services and collect revenue by way of digital means in light of the coronavirus crisis. The post emphasises that *"Fighting a pandemic while minimising the associated economic costs calls for appropriate digital infrastructure for the design and enforcement of containment measures, as well as to ensure access by the population and enterprises to critical government services."*

The post discusses the uses of geographic information systems, to control road and railway traffic, maintain regional or local infrastructure, and monitor water and sanitation usage, digital portals, to deliver public services and collect revenue, digital health care services, as well as the impact of financial resources and infrastructure of subnational governments in achieving progress in the digitalisation process.

EU Tax Academics Call for EU Solidarity Taxes

A group of prominent EU tax law academics have published an op-ed calling for the introduction of EU taxes in order to strengthen EU solidarity in the wake of the economic impact within the EU due to the COVID-19 outbreak. The group suggest that *“the present financing mechanism is replaced by a truly European mechanism of limited solidarity, in accordance with the common European ability to pay… a vote of confidence in the democratic European institutions, that they will be able to tax and spend well in the interests of the Union, which will benefit all Member States.”*

The op-ed cautions their manifesto is *“not a call for higher taxation, but in the first place for a limited and gradual shift in revenue between the Member States and the Union. This reform is not to be implemented in one big bang, but in a gradual process during a long transition period, like the customs union from 1957 to 1968. To keep the Union together we need that minimal glue of truly European solidarity, not more but surely not less.”*

Although CFE delegates and associates have been involved in the drafting of the manifesto, the content does not necessarily reflect CFE views on the matter.

OECD Publishes Taxing Wages 2020 Report

On 30 April 2020, the OECD will make public its annual flagship report on the rates of tax levied in OECD countries on the wages and salaries of citizens, Taxing Wages 2020.

The report will examine rates of taxation and compare, as a percentage share of gross salary, income tax and social security contributions made by employees, social security contributions and payroll taxes paid by employers, as well as any cash benefits received. In addition, the report will examine taxes at a household level, comparing rates of taxes across different pay levels and amongst different family configurations, such as families with and without children, and across those households with either single or multiple incomes.

Those wishing to read the report will be able to access it using this link after it is released.

Albert Rädler Medal 2019: CFE Announces Winner of Academic Excellence Award

CFE Tax Advisers Europe is proud to announce that the Albert J Rädler Medal Award 2019 for academic excellence in European taxation has been awarded to Mr William Criminisi of the Luigi Bocconi University for his Master’s thesis entitled “Hybrid Mismatch Arrangements in International Tax Law”.

The CFE Albert J Rädler Medal Award 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.

The CFE Academic Jury, composed of Prof. Dr Pasquale Pistone, Prof. Dr Michael Lang and Prof. Dr Otmar Thömmes, stated of the thesis that *“Mr Criminisi’s manuscript provides with a comprehensive and in-depth analysis of a very technical topic, such as hybrid mismatch arrangements, supported by comparative legal analysis. The focus on the implementation of BEPS related measures through the ATAD also takes into account the compatibility of the*

latter with primary law of the European Union. The proposal for issuing secondary EU legislation aligned with IAS/IFRS is constructive and formulated with due consideration of its technical implications and side repercussions."

The CFE Executive Board and CFE Academic Jury warmly congratulates Mr Criminisi, and wish him the best in his future career.

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BRUSSELS I 4 MAY 2020

OECD Update on International Work Progress

The OECD held a Tax Talks Webcast today concerning the recent and upcoming developments in the OECD's international tax work, not only in relation to the tax challenges presented by the COVID-19 crisis, but also as regards continuity on its programme of work.

Concerning progress on the work on taxation of the digital economy, a virtual meeting will be held by the Inclusive Framework in July to discuss progress made by the working groups. Pascal Saint-Amans stated that although one or two countries have requested the work of the OECD on the digital economy be delayed, the majority of other countries see an increased need to progress the work and reach a consensus in accordance with the original timeline, given further unilateral digital taxes being introduced.

It is expected that details of the key policy features will be agreed and made public in October, with the report on the final solution to be produced for the G20 by the end of the year. Good technical progress is reportedly being made in relation to both pillars, with the so-called "building blocks" being examined by the working groups presented during the discussion. However, notwithstanding the progress being made, Pascal Saint-Amans stated he does not exclude some staged process, with some aspects of the package being progressed further in 2021, given the shift in the timeline for agreement to be presented in October.

A digital public consultation will be held on 12 – 13 May concerning the 2020 review of BEPS Action 13 Country-by-Country reporting, to focus on improvements to the minimum standard for high level transfer pricing risk assessment, BEPS-related risks, economic analysis, as well as potential reporting introduced by the agreement on taxation of the digital economy.

As concerns the Automatic Exchange of Financial Account Information, it was confirmed in the webcast that the deadline for the CRS exchange had been extended to the end of December 2020, with jurisdictions encouraged to exchange earlier if possible. Additionally, the Peer Review process is ongoing, with further reports to be released in summer.

The webcast was recorded and can be replayed via the OECD's Tax Talks Webcast page.

Commission Extends Investigation into the Netherlands' Tax Treatment of IKEA

The Commission has announced it will extend the scope of its State aid investigation into the tax treatment of Inter IKEA by the Netherlands, initially opened in December 2017. The investigation relates to two tax rulings in 2006 and 2011 issued by the Netherlands to IKEA's

Dutch subsidiary, Inter IKEA, and whether the transfer price of the Intellectual Property rights was too high, allowing the Dutch subsidiary to pay less tax and therefore granting them an advantage over other companies.

The Commission has now extended the investigation to examine amortisation of the IP rights in more recent years by the Dutch subsidiary, and whether deduction of the amortisation by the Dutch subsidiary granted an advantage over other companies.

In addition, the Commission has announced it has opened an investigation to determine whether Belgian State aid provided to support production of a videogame is in line with State aid rules, and in particular a previously approved 2014 State aid measure introduced in Belgium to provide a tax advantage for film production, subject to it meeting certain territorial spending conditions. Further information will be made available on the Commission Competition website in due course.

EU Member States Raise Inequality Issues in COVID-19 State Aid Measures

Concerns are being raised surrounding the amounts of State aid relief being granted by EU Member States pursuant to the Temporary State Aid Framework approved by the European Commission in March to assist Member States in dealing with the economic impact of the COVID-19 outbreak.

Issues of unfair competition, inequality in economic recovery and risk to the Single Market are being raised by smaller EU Member States, in light of the amounts of State aid being granted by larger EU economies. To date, the relief granted by Germany accounts for over half of the amount of State aid approved by the EU in response to the COVID-19 outbreak. These concerns may impact on further relaxation of State aid rules, and negotiations for other EU-responses to the crisis.

An update to the EU Temporary Framework is anticipated this week.

European Commission Publishes Proposed Amendments to Union Customs Code

The European Commission has published a draft implementing regulation setting out proposed updates for rules on the Union Customs Code, required in order to adapt the rules for needs of industry, improve harmonisation of implementation of the Code across the EU, and to ensure security and customs controls are not compromised.

A public consultation inviting input concerning the draft implementing regulation will now run until 28 May 2020. Those wishing to submit input can do so via the Have Your Say portal.

Indonesia Ratifies OECD MLI

Indonesia 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. There are now 94 jurisdictions covered by the Convention, with 45 countries having ratified, approved or accepted the MLI.

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KEY TAX NEWS OF THE WEEK

BRUSSELS I 11 MAY 2020

Commission Proposes to Postpone DAC6 Reporting & VAT E-Commerce Implementation

The European Commission has published proposals for Council decisions to postpone deadlines imposed by the EU Directive on Administrative Cooperation by 3 months, as well as the entry into force of the VAT E-commerce package by 6 months.

This follows on from public requests made by financial and professional association organisations, seeking leniency in the enforcement of penalties and deadlines contained within the Directive due to the extraordinary consequences of the COVID-19 outbreak which have resulted in severe disruption across the European economy.

As concerns the Directive on Administrative Cooperation, the proposal would:

- *Defer the time limit for exchanges of information on Reportable Financial Accounts by 3 months, i.e. until 31 December 2020;*
- *Change the date for the first exchange of information on reportable cross-border arrangements that feature in Annex IV to Council Directive 2011/16/EU from 31 October 2020 to 31 January 2021;*
- *Change the date for the beginning of the period of 30 days for reporting cross-border arrangements which are included in Hallmarks listed in Annex IV to Council Directive 2018/822/EU from 1 July 2020 to 1 October 2020;*
- *Change the date for the reporting of the ‘historical’ cross-border arrangements (i.e. arrangements that became reportable from 25 June 2018 to 30 June 2020) from 31 August 2020 to 30 November 2020.*

The Commission has also included in the proposal concerning the Directive on Administrative Cooperation the possibility of extending the reporting deadlines for a further 3 months, depending on the continued evolution of the coronavirus impact on the EU.

As concerns the VAT e-commerce package, the proposals would *“only concern the date of application of the already adopted legal framework of the VAT e-commerce package set out in the VAT Directive. The date of application shall be postponed by six months. This means that the rules shall be applied as of 1 July 2021 instead of 1 January 2021. Consequently, Member States shall adopt and publish their transposition measures by 30 June 2021 instead of 31 December 2020.”*

The proposals will be considered by the Council as a matter of priority.

EU Commission Publishes Anti-Money Laundering Action Plan

The Commission has adopted an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing. The plan is comprised of 6 pillars, which the Commission aims to deliver on by 2021. The pillars are:

1. Effective implementation of existing rules;
2. A single EU rulebook;
3. EU-level supervision;
4. A support and cooperation mechanism for financial intelligence units;
5. Better use of information to enforce criminal law;
6. A stronger EU in the world.

The Action Plan builds on deficiencies identified in the package adopted by the Commission in July 2019 concerning the implementation of the EU anti-money laundering framework, which stressed the need for increased harmonisation at EU level and EU mechanisms to strengthen the framework.

Alongside the Action Plan, the Commission also published a Revised Methodology for identifying high risk third-countries with deficiencies in their money-laundering and counter terrorist financing regimes. It aims to improve transparency in the process by *"(i) the interaction between the EU and FATF listing process; (ii) an enhanced engagement with third countries; and (iii) reinforced consultation of Member States experts."*

In addition, the Commission has published an updated List of High-Risk Third Countries, by way of Delegated Regulation, in line with its revised methodology. The list has been submitted to the European Parliament and Council for approval, which ordinarily should occur within one month.

A consultation concerning the Action Plan has been launched on the Have Your Say webpage, which will run until 29 July 2020.

Delivery of EU Tax Package Delayed Until July 2020

EU Commission proposals previously anticipated to be published on 10 June of this year are now set to be released on 15 July. An indicative planning document details that the Commission's Anti-Fraud Package and Customs Union Package are expected to be published in mid-July, though the agenda notes that this is yet to be confirmed.

The Anti-Fraud Package will be comprised of:

- Communication on an 'Action Plan to fight tax evasion and to make taxation simple and easy';
- Communication on 'Tax good governance in the EU and beyond', encompassing the external action strategy towards third countries, and possible, some intra-EU aspects;
- Revision of the Directive on automatic exchange of information – DAC7, which concerns reporting on income derived from online platforms (both direct and indirect tax aspects), which coincides with work undertaken by OECD's Working Party 9 and 10 on voluntary model rules for reporting of online platform activities.

The Customs Union Package will be comprised of an Action Plan on the Customs Union and a legislative proposal on the Customs Single Window.

Decision of the CJEU in Case C-547/18 on Place of Supply & PE Under EU VAT Law

The Court of Justice of the European Union has recently delivered its decision in Case C-547/18 *Dong Yang Electronics Sp. z o.o. v Dyrektor Izby Administracji Skarbowej we Wrocławiu*, a reference for a preliminary ruling from the Polish Regional Administrative Court, in which the Court of Justice was asked to give its ruling concerning the place of supply of services under VAT law.

The case concerned a Korean company, Dong Yang Electronics, who, with the involvement of its Polish subsidiary, engaged a Polish entity to make supplies of assembly services. The Court was asked to determine whether the involvement of its Polish subsidiary created a fixed establishment of the Korean contractor, such that the place of supply was Poland, creating an obligation for European VAT to be paid.

The ECJ in its decision held that *"a permanent establishment of a company established in a third State cannot be inferred by a service provider solely from the fact that that company has a subsidiary there"* and that *"Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, and Article 11, paragraph 1, and Article 22, paragraph 1, of the implementing Regulation (EU) No o 282/2011 of the Council of 15 March 2011 laying down implementing measures for Directive 2006/112, must be interpreted as meaning that the existence, within the territory of a Member State, of a permanent establishment of a company established in a third State cannot be inferred by a service provider solely because this company has a subsidiary there and that this service provider is not required to inquire, for the purposes of such an assessment, of the contractual relations between the two entities."*

The Court did not follow the Advocate General Opinion of AG Kokott in this case, in which AG Kokott held that in principle a subsidiary of a company established outside the EU should not be regarded as a fixed establishment for VAT purposes, except in circumstances where the contractual structure concerning the arrangements could be shown to contain elements of abuse.

EU Confirms Enlargement of the Union with Western Balkans at the Zagreb Summit

At the EU-Western Zagreb Balkans Summit, a highlight of the Croatian EU Presidency unfortunately forced to be held virtually in light of the Coronavirus outbreak, the EU affirmed its commitment to a European vision for the Western Balkans.

President Ursula von der Leyen, speaking at the press conference following the Summit stated *"This Summit, even if it is virtual, is a testimony of the importance the European Union gives to the region. And it is a testimony that the Western Balkans are an absolute priority for the European Union and for my Commission. The Western Balkans belong in the EU. There is no question for us about this. And this is why I firmly believe that the European Union has a special responsibility in assisting its partners in the region."*

During the Summit, the Zagreb Declaration was concluded, under which the EU Member states have promised a 3 Billion Euros package to the Western Balkans to support the post-coronavirus crisis recovery of the region, conditioned with a commitment by the Western Balkans governments to uphold European values and principles and carry out necessary legal and socio-economic reforms to meet those values.

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KEY TAX NEWS OF THE WEEK

BRUSSELS I 18 MAY 2020

Commission Expands Temporary State Aid Framework

The European Commission has expanded the Temporary State Aid Framework adopted in March 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 Commission has now expanded the Framework to include criteria for Member States to apply when providing recapitalisation and subordinated debt to companies, to protect the EU level playing field.

Concerning the expanded Framework, Executive Vice-President Margrethe Vestager stated *"if Member States decide to step in, we will apply today's rules to ensure that taxpayers are sufficiently remunerated and their support comes with strings attached, including a ban on dividends, bonus payments as well as further measures to limit distortions of competition. And for public transparency, large companies also have to report on the use of aid received and compliance with their responsibilities linked to the green and digital transitions. Because we have to uphold European values and the need for a level playing field to be able to bounce back strongly from this crisis."*

Full details concerning the measures can be found here.

OECD Hosts BEPS Action 13 Consultation Webinar

A digital public consultation was held on 12 – 13 May by the OECD concerning the 2020 review of BEPS Action 13 Country-by-Country reporting, focusing on improvements to the minimum standard for high level transfer pricing risk assessment, BEPS-related risks, and analysis of various aspects concerning the reporting standards.

The public consultation was recorded and can be replayed via the OECD's website.

EU Commission Publish Infringement Package

The European Commission has published its May 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 eight Member States, namely Belgium, the Czech Republic, Estonia, Ireland, Greece, Luxembourg, Austria and Poland, as well as the UK, for failing to fully 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.

Luxembourg and Portugal were issued with letters of formal notice for incorrectly transposing the interest limitation rule in the Anti-Tax Avoidance Directive. Additionally, Romania was issued with a reasoned opinion concerning the failure to have in place proper IT systems for the monitoring of the circulation of excise goods of alcohol, tobacco and energy products within the EU.

The Commission has also referred the Netherlands to the Court of Justice for breaching the fundamental EU freedoms by its imposition of taxation on the transfer of pension capital to other Member States, which is not imposed on domestic transfers of pension capital.

Further details of the full infringement package can be found here.

Countries Agree on COVID-19 Taxation of Cross-Border Workers

In recent weeks, various countries have agreed on the taxation of cross-border workers during the COVID-19 outbreak period. This follows after OECD guidance was published analysing tax treaty implications concerning certain tax issues raised by the circumstances surrounding the COVID-19 outbreak, such as potential creation of a permanent establishment or change in the place of effective management on the basis of a cross-border employee carrying out duties remotely, as well as other issues concerning cross-border workers and changes in the residence status of workers.

Agreements have been concluded between Belgium and the Netherlands, the Netherlands and Germany and Germany and Belgium, with countries generally agreeing that days worked at home due to COVID-measures would count as days worked in the contracting state. Some agreements deal with more specific cases versus a general agreement. Further agreements are expected to be concluded in the coming weeks.

Czech Republic & Korea Ratify OECD MLI

Czech Republic & Korea have both 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. It now extends to over 1,650 bilateral tax treaties. There are now 94 jurisdictions covered by the Convention, with 47 countries having ratified, approved or accepted the MLI.

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BRUSSELS I 25 MAY 2020

France to Impose Digital Tax in Absence of OECD Agreement

French Finance Minister Bruno Le Marie has confirmed that France will only proceed with the imposition of its planned digital tax should no agreement be reached at OECD level by the end of 2020.

The French digital tax was signed into law on 24 July 2019, imposing 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. In January, Steven Mnuchin, the US Treasury Secretary and Bruno Le Marie 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.

Speaking concerning the trade implications of any agreement at international level, Pascal Saint-Amans reportedly stated *"Interestingly, I would see the impact of COVID on trade as probably pulling some of the teeth out of the mouth of 301, the threat by the U.S. to take sanctions against countries moving unilaterally," Saint-Amans said. "We can see Indonesia, India, Nigeria, Egypt joining France, the U.K., Spain, Italy, Austria, Turkey, and I could name many others that are going to move if we don't have the solution very quickly."*

The outcome and any agreement concerning OECD negotiations is anticipated in October.

EU Economic & Finance Ministers Videoconference on EU COVID-19 Response

On 19 May, EU Finance Ministers held a videoconference to discuss and assess the EU response on the economic impact of the coronavirus pandemic, and the EU recovery package agreed by Ministers on 9 April, which will provide targeted relief for EU economies in response to the COVID-19 outbreak.

The Ministers welcomed the adoption of the temporary support to mitigate unemployment risks, SURE, which allows for up to 100 Billion Euros in loans to Member States to finance short-term work schemes.

Ministers also discussed the Commission's recently published Action Plan on anti-money laundering and terrorist financing, as well as its revised methodology for identifying high-

risk third countries. In particular, ministers discussed how to further improve the existing AML framework, by creating a harmonised set of rules and establishing a new dedicated EU authority for AML.

European Spring Semester Package Released

The European Commission has published its Spring Semester Package, evaluating the main economic challenges and opportunities for Member States and setting out Country-Specific Recommendations in light of their present circumstances.

The Spring Package focuses in particular on the impact of the coronavirus epidemic on Member States' national finances and economic performance, and recommendations are based on the need for a coordinated European response to mitigate the economic damage and to attempt to ensure stability and equality in recovery throughout Europe.

Paolo Gentiloni, Commissioner for Economy, said of the Semester Reports: *"The coronavirus pandemic and the necessary containment measures have dealt a brutal blow to Europe's economies. These recommendations reflect that unprecedented situation. The priorities today are to strengthen our healthcare, support our workers, save our businesses. Yet the challenges we faced before this crisis have not gone away. So as we look to the future, our investment and reform objectives must remain focused on making a success of the green and digital transitions and ensuring social fairness.* ***That also means everyone must pay their share: there can be no place for aggressive tax planning in a Europe of solidarity and fairness."***

Further details of the Semester Reports can be found here.

UK Publish Post-Brexit Global Tariff Plan

The UK's revenue authority, HM Revenue & Customs, has published details of the UK tariff, or so-called UK Global Tariff, which will apply on the importation of goods into the UK from 1 January 2021. The UK Global Tariff will replace the EU Common External Tariff.

The new Global Tariff will apply to all imported goods, except where: there is a trade agreement between the UK and country from which the goods are being imported, an exemption or some sort of relief applies, or the goods come from a country which forms part of the Generalised Scheme of Preferences.

The Global Tariff does not include VAT or any other import duties that may be payable, nor does it take into account anti-dumping or other sorts of restrictions that may apply.

French-German Initiative for EU Recovery from Coronavirus Crisis

France and Germany have published a joint statement setting out an initiative for European recovery from the impact of the coronavirus crisis. The initiative sets out four measures as being key to recovery:

- **Developing a EU "Health Strategy"** – increasing EU research capacity for vaccines and treatments, coordinating EU procurement policy, as well as ensuring EU production and stocks of medicine and medical products;

- **Establishing a EU "Recovery Fund"** – A temporary recovery fund to be funded through the Commission borrowing on markets on behalf of the EU, to assist the most affected sectors and regions;

- **Speeding up Green & Digital Transitions** – modernise the EU economy and business by accelerating digital transitions and ensuring a carbon-neutral economy by 2050;

- **Giving "New Impulse" to the Single Market** - diversify supply chains, adjust industrial strategy to recovery plans and develop a roadmap to create a fully integrated single market in key areas.

The countries propose in the statement that the initiative should be discussed at the Conference on the Future of Europe, which was due to begin on 7 May but has been postponed until further notice.

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EU Commission Presents Recovery Package Proposal

On 27 May, the EU Commission presented its recovery package proposal to "repair and prepare" the European Union following the impact of the coronavirus crisis on the EU economy. The package comprises a new recovery instrument, the Next Generation EU, embedded within the EU budget for 2021 – 2027, as well as specific reforms to the EU budget itself. An updated Work Programme was also published alongside the proposals.

750 Billion Euros will be raised by the Next Generation EU recovery instrument, by lifting the ceiling on own borrowing on the open market, with funds to be invested in EU programmes and repaid from EU budgets between 2028 and 2058. The fund will support Member State investments and reforms, incentivise private investment and strengthen EU healthy security and prepare for future crises. The fund will invest in programmes that align with EU policy priorities; in particular the European Green Deal, in circular economy and renewable energy projects, as well as in projects that strengthen the Single Market and the EU's digital and technological presence.

Further details are available here.

EU Launches Digital Services Act Package Consultation

The EU Commission has launched a consultation concerning its Digital Services Act Package, which is expected to be released by the end of 2020. The Digital Services Act Package will introduce a modernised regulatory framework for digital services, in particular concerning: 1) the fundamentals of the e-commerce directive, by introducing rules concerning the role of online intermediaries, as well as an EU-wide governance system; 2) ensuring a level playing field in European digital markets, likely by introducing additional rules for platforms of a certain size, as well as specific regulatory requirements.

Executive Vice-President Margrethe Vestager said of the consultation: *"The Internet presents citizens and businesses with great opportunities, which they balance against risks that come with working and interacting online. At this time, we are asking for the views of interested citizens and stakeholders on how to make a modern regulatory framework for digital services and online platforms in the EU. Many of these questions impact the day-to-day lives of citizens and we are committing to build a safe and innovative digital future with purpose for them."*

The consultation will run until 8 September 2020. Input can be submitted here.

OECD Publishes Report on Restoration Planning by Tax Administrations

The OECD has published a report prepared by the Forum on Tax Administration in co-operation with the Intra-European Organisation of Tax Administrations and the Inter-American Center of Tax Administrations concerning how tax administrations can benefit from significant early business restoration planning for the recovery period from the coronavirus crisis. The report was published alongside another report highlighting the significant security, fraud and privacy risks posed by the crisis.

Director of the Centre for Tax Policy & Administration of the OECD, Pascal Saint-Amans, commented that *"Early planning for the recovery period from COVID-19 is critical given the scale of the challenges and risks that lie ahead. The collaborative work being undertaken by the FTA, CIAT and IOTA, including outreach to developing countries, is vitally important in helping to mitigate those risks as well as identify opportunities to increase the effectiveness and efficiency of tax administration in a post-crisis world."*

The Forum on Tax Administration are working on identifying future priorities, in particular concerning digitalization of tax administrations, difficulties concerning taxpayers working cross-border, as well as further issues arising from business continuity and recovery considerations.

EU Publish Antitrust Competition Tool Inception Impact Assessment

The EU Commission has published an Inception Impact Assessment and launched a consultation concerning a proposed antitrust competition tool, which would allow for intervention against structural competition problems in markets. The Inception Impact Assessment details that the four policy options being explored for the tool are for either a dominance-based or market structure-based instrument, with either limited or horizontal scope.

Executive Vice-President Margrethe Vestager said of the need for the antitrust instrument that: *“There are certain structural risks for competition, such as tipping markets, which are not addressed by the current rules. We are seeking the views of stakeholders to explore the need for a possible new competition tool that would allow addressing such structural competition problems, in a timely and effective manner ensuring fair and competitive markets across the economy.”*

The public consultation will run until 8 September 2020. Input on the Inception Impact Assessment can be submitted until 30 June. Responses can be submitted here.

EU Launch Consultation on the VAT Scheme for Travel Agents & Tour Operators

The EU Commission have launched a consultation on the VAT scheme for travel agents and tour operators, which was introduced in order to simplify the application of EU VAT rules for tour operators and travel agents.

The consultation aims to evaluate the effectiveness, relevance and coherence of the current special scheme, and whether it is fit for purpose in a digitalised economy, as well as its overall coherence with normal EU VAT rules.

The consultation can be accessed at the Have Your Say webpage. Input can be provided until 14 September.

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BRUSSELS I 8 JUNE 2020

ECOFIN Report to EU Council on Tax Issues

The ECOFIN Council has issued a draft report providing an overview of the progress on tax policy work achieved under the Croatian Presidency of the EU. The report highlights in particular the agreement reached on the legislative package on mandatory transmission and exchange of VAT relevant payment information, the adoption of the directive on the common system of value added tax as regards the special scheme for small enterprises, the conclusions on the future evolution of administrative cooperation in the field of taxation in the EU and the negotiations on amending the administrative cooperation directive to defer deadlines for exchange of information as a result of the coronavirus crisis.

The report also contains a detailed update concerning other significant tax files, such as CCTB, the EU digital taxation package and the EU position on international negotiations and progress on the VAT Action Plan. Germany will take over the presidency of the European Union on 1 July 2020.

The Netherlands Publishes DAC6 Guidance

The Netherlands has published guidance concerning the Directive as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements, commonly referred to as "DAC6".

Members States had until 31 December 2019 to implement the Directive into domestic legislation. 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. In late 2019, CFE, together with the European Contact Group (ECG) and the European Group of International Accounting Networks and Associations (EGIAN), sent a joint letter to the European Commission and members of Working Party IV encouraging the Commission and the Member States to continue their efforts to provide more guidance and clarification in the process of implementing DAC6.

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

Council of EU Approves Conclusions on Future Administrative Cooperation in Taxation

The Council of the European Union has now approved conclusions on the future of administrative cooperation in taxation in the EU. The conclusions state that the Council

believe that strengthening cooperation is *"a very important part of the comprehensive EU effort to curb tax fraud, tax evasion and tax avoidance"* and *"are particularly relevant in the context of the need for recovery from the crisis caused by the COVID-19 pandemic"*.

The Council also urges the European Commission to *"establish a common standard at EU level for the reporting and tax information exchange mechanisms"* concerning digital platforms, and states that *"EU legislation on tax transparency and exchange of information continues to build on the international consensus reached in the OECD fora"*.

UN Committee of Tax Experts Invites Input on Session Papers

The UN Committee of Experts on International Cooperation on Tax Matters has published the agenda and session papers ahead of their 20th Session meeting, to be held virtually between 22 and 26 June.

The session will address progress on updating the Model Double Taxation Convention and Transfer Pricing Manual, as well as on new guides being developed on tax dispute avoidance and resolution and environmental taxation. Issues related to the digitalisation of the economy and sustainable development goals will also be discussed at the Session.

Comments can be submitted concerning the Session papers until 15 June 2020 via e-mail to taxcommittee@un.org.

Platform for Collaboration on Tax Issues Toolkit on the Taxation of Offshore Indirect Transfers

The Platform for Collaboration on Tax Issues have issued a Toolkit on the Taxation of Offshore Indirect Transfers, concerning the design and implementation issues on taxing offshore indirect transfers.

The Toolkit aims in particular at addressing concerns of developing countries which are rich in natural resources, surrounding the indirect transfer of assets related to the natural resources, and suggests models for domestic legislation incorporating taxation of offshore indirect transfers.

The selection of the remitted material has been prepared by
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CFE's Tax Top 5
KEY TAX NEWS OF THE WEEK

BRUSSELS I 15 JUNE 2020

EU Council Reaches Agreement on DAC6 Reporting Extension

Political agreement was reached on 3 June by Member States' representatives at the Permanent Representatives Committee meeting concerning the Commission proposal for a directive to defer deadlines for exchange of information under the administrative cooperation directive as a result of the coronavirus crisis.

The amended proposal agreed by COREPER will provide the option for Members States to postpone deadlines imposed by the EU Directive on Administrative Cooperation for reporting of relevant cross-border arrangements by 6 months. Certain Member States have already indicated their intention to introduce legislation transposing the extension to the reporting deadline into domestic law.

It is anticipated that the revised proposal as agreed will be formally adopted by the EU Council before the end of June by way of written procedure.

Council of EU Publishes Overview of Member States' Preferential Tax Regimes

The Council of the European Union has published an overview produced by the Code of Conduct Group (Business Taxation) concerning the preferential tax regimes of the Member States.

The overview was produced in line with 2016 Council conclusions on the future of the Code of Conduct Group, with a view to increase public access to information on the work of the Group, and to release documents related to decisions and activities of the Group.

The overview details the work process of the Code of Conduct Group concerning the preferential tax regimes, including the identification of regimes, the description of the measures by the Group, the classification of whether measure are harmful or not, and the steps taken thereafter concerning the abolition, rollback or amendment of the regime in line with recommendations of the Group.

Some preferential tax regimes included in the overview also include details of grandfathering in relation to the measures.

US Launches Investigations into Countries with Digital Taxes

The Office of the US Trade Representative has announced the US will be carrying out investigations under Section 301 of its 1974 Trade Act concerning digital services taxes that have either been adopted or are being considered at political level by a number of countries worldwide. The jurisdictions listed include: Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom.

A similar investigation was carried out by the US in 2019 into the French digital services tax, following the French digital tax being signed into law on 24 July 2019. Threats of retaliatory tariffs escalating into a trade war were avoided after an agreement was reached in January 2020, in which the US 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.

The move puts increased pressure on efforts to reach an international agreement at the OECD level.

EU Commission to Extend Temporary State Aid Framework to SMEs

The European Commission is consulting Member States concerning a proposal to expand the Temporary State Aid Framework adopted in March to assist Member States in dealing with the economic impact of the COVID-19 outbreak to now include specific provisions allowing Member States to support micro and small enterprises.

The Commission is proposing to allow Member States to provide public support to micro and small companies, even if they would have been classified as being in financial difficulty at the end of 2019, to support innovation and start-up companies that may have been in a loss-making high-growth phase.

Executive Vice-President Margrethe Vestager stated of the consultation: *“Micro, small and start-up companies face specific challenges as a result of the coronavirus crisis. They are crucial for the economic recovery of the Union. That's why we propose to extend the Temporary Framework to enable Member States to give further support to micro and small companies, including start-up companies. Furthermore, we propose to introduce conditions that provide incentives for private investors to participate alongside the State in recapitalisations. This is welcome as it reduces the need for State aid and the risk of distortions to competition.”*

IBFD Launches 2019 Yearbook on Taxpayers’ Rights

On 8 June, the IBFD published the 2019 Yearbook on Taxpayers’ Rights, the most recent compilation of information by the Observatory on the Protection of Taxpayers’ Rights concerning global developments in the protection of taxpayers’ rights.

The release of the 2019 report is accompanied by video presentations recorded by Prof. Dr Pasquale Pistone, Prof. Dr Philip Baker and Prof. Dr Carlos E. Weffe examining global developments and identifying recent trends in taxpayers' rights protection.

The report and videos can be viewed here.

The selection of the remitted material has been prepared by
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CFE'sTax Top 5

KEY TAX NEWS OF THE WEEK

BRUSSELS I 22 JUNE 2020

US Withdraws from International Digital Tax Negotiations

On 17 June US Trade Representative Robert E. Lighthizer confirmed that the US was withdrawing from OECD Inclusive Framework discussions on taxation of the digital economy. The decision was communicated to European Finance Ministers in a letter last week, igniting fears of a trade war between the EU and US.

The OECD published a public statement in response to the developments, with OECD's Secretary-General, Angel Gurría, stating "All members of the Inclusive Framework should remain engaged in the negotiation towards the goal of reaching a global solution by year end…Absent a multilateral solution, more countries will take unilateral measures and those that have them already may no longer continue to hold them back. This, in turn, would trigger tax disputes and, inevitably, heightened trade tensions. A trade war, especially at this point in time, where the world economy is going through a historical downturn, would hurt the economy, jobs and confidence even further. A multilateral solution based on the work of the 137 members of the Inclusive Framework at the OECD is clearly the best way forward."

EU Commissioner for the Economy, Paolo Gentiloni, responded to the decision stating "*We need a digital tax adapted to the reality of the new century. An agreement is needed in the global negotiations. If the American withdrawal makes it impossible, the EU Commission will put a new European proposal on the table".* A failure to agree an agreement at international level, will very likely lead to a raft of further unilateral digital taxes being introduced, and retaliatory tariffs, escalating to trade wars.

A virtual meeting of the Inclusive Framework is scheduled to take place in July to discuss progress made by the working groups. It was expected that details of the key policy features would be agreed and made public in October and a report produced for the G20 by the end of the year on the final solution agreed on by the Inclusive Framework.

EU Parliament Establishes Permanent Tax Subcommittee

At the Plenary Session on 18 June, the European Parliament voted to establish a permanent tax subcommittee to the Committee on Economic and Monetary Affairs. The subcommittee will be comprised of 30 members, and will be responsible for investigating issues surrounding *"tax-related matters, and particularly the fight against tax fraud, tax evasion and tax avoidance, as well as financial transparency for taxation purposes".*

The move to create a permanent tax subcommittee had been anticipated following on from several temporary inquiries into specific tax scandals being established in the past. The most recent committee, the TAX3 Committee, tasked with investigating financial crimes, tax evasion and tax avoidance, noted in its report adopted by the European Parliament in March 2019 that there was a lack of political will in EU Member states to address tax evasion, tax avoidance and financial crime. The TAX3 Committee recommended the Commission and Council adopt a comprehensive definition of aggressive tax planning, commence work immediately on establishing European financial police force, an EU financial intelligence unit, and an EU anti-money laundering supranational watchdog.

The EU Council also adopted conclusions on 17 June concerning the enhancement of investigations into organised crime, calling for further cooperation on the exchange of financial information, the work of Financial Intelligence Units to be adapted, the legal framework for virtual assets to be improved and for Member States to consider the imposition of harmonised cash payment limits.

ECJ Decision - *KrakVet Marek Batko* Case C-276/18 on Cooperation Between Member States Tax Authorities for VAT Purposes

The Court of Justice of the European Union has delivered its decision in Case C-276/18, *KrakVet Marek Batko sp.k. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*, a request for a ruling from the Hungarian Administrative Court. The case concerns a pet goods company established in Poland, which made supplies to Hungarian customers using a Hungarian version of its website. The company applied distance sales rules, applying Polish rates of VAT on the basis that the supplies made were under the relevant threshold. The supplies were transported to Hungary using a Polish transportation company, who delivered the goods to two distribution points in Hungary. From the distribution points, the goods were then delivered to customers by a Hungarian transportation company.

The company applied to the Polish tax authorities for a ruling on the place of supply concerning the Hungarian customers, who took the view that the transactions were carried out in Poland. The Hungarian tax authorities subsequently carried out inspections concerning the supplies, and required KrakVet to pay the difference in VAT, together with a penalty and interest and a fine for falling to comply with its obligation to register for VAT in Hungary.

The Court was asked to consider *"the scope of the obligation of cooperation between the authorities of the Member States under Regulation No 904/2010 and, second, on the interpretation of the concept of supplies of goods dispatched or transported 'by or on behalf of the supplier', within the meaning of Article 33 of Directive 2006/112"* and whether *"it is possible for the Hungarian tax authorities, in the light of the principle of fiscal neutrality and the objective of avoiding double taxation, to adopt a different position from that of the Polish tax authorities".*

The Court held, in Paragraph 97 of the decision that:

> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Articles 7, 13 and 28 to 30 of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax must be interpreted as not precluding the tax authorities of a Member State from being able, unilaterally, to subject transactions

to value added tax treatment different from that under which they have already been taxed in another Member State.

Article 33 of Directive 2006/112 must be interpreted as meaning that, when goods sold by a supplier established in one Member State to purchasers residing in another Member State are delivered to those purchasers by a company recommended by that supplier, but with which the purchasers are free to enter into a contract for the purpose of that delivery, those goods must be regarded as dispatched or transported 'by or on behalf of the supplier' where the role of that supplier is predominant in terms of initiating and organising the essential stages of the dispatch or transport of those goods, which it is for the referring court to ascertain, taking account of all the facts of the dispute in the main proceedings.

EU law and, in particular, Directive 2006/112 must be interpreted as meaning that it is not necessary to find that transactions by which goods sold by a supplier are delivered to purchasers by a company recommended by that supplier constitute an infringement of the law when, on the one hand, there is a connection between the supplier and that company, in the sense that, irrespective of that delivery, the company takes charge of some of the supplier's logistical needs, but, on the other hand, the purchasers remain free to make use of another company or personally collect the goods, since those circumstances are not liable to affect the finding that the supplier and the transport company recommended by it are independent companies which engage, on their own behalf, in genuine economic activities and, consequently, those transactions cannot be classified as abusive.

The decision is available here in all official EU languages.

EU Commission Publishes Brexit VAT Update

The European Commission has published an updated Notice to Stakeholders concerning the EU rules applicable to services in light of the UK withdrawal from the EU.

The Notice confirms that during the transition period the UK continues to be subject to the EU VAT Directive in respect of transactions for services made during this period. Thereafter, the Notice sets out that for supplies of services, suppliers from the UK will need to register under the mini-one-stop-shop as a supplier in the relevant Member States. Additionally, requests for cross-border VAT refunds between the UK and Member States will be subject to the 13th VAT Directive following the transition period.

A EU-UK statement issued last week confirms that the UK will not entertain an extension of the transition period, and states that significant progress still needs to be made to agree an exit deal. It indicates that negotiations will be intensified in the coming months.

ECOFIN Report to EU Council on Tax Issues Approved

The EU Council has now approved the report prepared by the ECOFIN Council providing an overview of the progress on tax policy work achieved under the Croatian Presidency of the EU.

The report highlights in particular the agreement reached on the legislative package on mandatory transmission and exchange of VAT relevant payment information, the adoption

of the directive on the common system of value added tax as regards the special scheme for small enterprises, the conclusions on the future evolution of administrative cooperation in the field of taxation in the EU and the negotiations on amending the administrative cooperation directive to defer deadlines for exchange of information as a result of the coronavirus crisis.

The report also contains a detailed update concerning other significant tax files, such as CCTB, the EU digital taxation package and the EU position on international negotiations and progress on the VAT Action Plan.

Germany will take over the presidency of the European Union on 1 July 2020.

The selection of the remitted material has been prepared by
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CFE's Tax Top 5
KEY TAX NEWS OF THE WEEK

BRUSSELS I 29 JUNE 2020

DAC6 Optional Deferral Enters Into Force

The proposal as agreed by Member States in early June to defer deadlines for exchange of information under the administrative cooperation directive as a result of the coronavirus crisis has now been published in the Official Journal of the European Union and has entered into force.

The Directive provides the option for Members States to postpone deadlines imposed by the EU Directive on Administrative Cooperation for reporting of relevant cross-border arrangements by 6 months. The Directive also provides that the Council can agree to extend the deadlines in the Directive by a further 3 moths, if required by the circumstances surrounding the coronavirus.

The Directive allows Member States to defer deadlines arising out of the Directive as follows:

- Defer time limit for exchange of information on Reportable Financial Accounts from 30/09/2020 to 31/12/20 (note: DAC2 – CRS)
- Defer date for 1st exchange of DAC6 information from 31/10/20 to 30/04/21
- Defer date for beginning of 30 days period for reporting cross-border arrangements from 01/07/20 to 01/01/21
- Defer date for reporting 'historical' arrangements (that became reportable from 25/06/18 to 30/06/20) from 31/08/20 to 28/02/21

Certain Member States have already proceed to introduce legislation transposing the extension to the reporting deadline into domestic law.

EU Consultation on Foreign Subsidies

The European Commission has launched a consultation on a White Paper concerning foreign subsidies. The Consultation states that *"Subsidies granted by non-EU governments to companies in the EU appear to have an increasing negative impact on competition in the Single Market, but fall outside EU State aid control. There is a growing number of instances in which foreign subsidies seem to have facilitated the acquisition of EU companies or distorted the investment decisions, market operations or pricing policies of their beneficiaries, or distorted bidding in public procurement, to the detriment of non-subsidised companies. Moreover, the existing trade defence rules relate only to exports of goods from third countries and thus do not address all distortions caused by foreign subsidies granted by non-EU countries. Where foreign subsidies take the form of financial flows facilitating acquisitions of EU companies or where they directly support the operation of a company in the EU, or facilitate bidding in a public procurement procedure, there appears to be a regulatory gap The White Paper on Foreign Subsidies, adopted by the European*

Commission on 17 June 2020, therefore proposes solutions and calls for new tools to address this regulatory gap."

The consultation will run until 23 September 2020. Input can be submitted here. The Commission will present legislative proposals based on the responses received to the consultation.

EU 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 116th meeting, the VAT Committee reviewed implementation of the Quick Fixes Package, issues surrounding the Voucher Directive, VAT aspects of centralized customs clearance, immovable property as a supply for consideration, reduced VAT rates on supplies of electricity, services supplied by digital platforms, VAT identification numbers obtained after the chargeability of VAT on a supply, and recent judgments of the ECJ.

German EU Council Presidency Calendar

Germany, who hold the Presidency of the Council of the European Union from 1 July 2020 to 31 December 2020, have published a calendar setting out the planned meetings for its Presidency period, as well as details of the priorities for its presidency period.

The programme for the Presidency will focus on recovery from the COVID-19 crisis, as well as on creating *"a stronger and more innovative Europe, a fair Europe, a sustainable Europe, a Europe of security and common values and a strong Europe in the world."*

The full Presidency programme will be published on 30 June 2020.

CFE Reappointed to the EU Platform for Tax Good Governance Expert Group

CFE Tax Advisers Europe is pleased to announce that it has been appointed as a **non-governmental member of the European Commission's Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation**. The Platform was established by the European Commission in order to seek advice and assistance from expert stakeholders in the field of tax good governance, aggressive tax planning and double taxation. The Platform also provides an opportunity for members to exchange views and have an open dialogue with the European Commission concerning significant taxation issues facing the tax profession and wider society.

CFE is honoured to be among the limited number of non-governmental members and to be the only organisation of advisers in the professional tax field selected to participate in the important work the Platform carries out. In line with Commission Decision 2019/C 428/08 on the renewal of the platform's members, CFE's mandate at the Platform for Tax Good Governance will run **until 31 October 2022**, after which time CFE will have the possibility to renew its participation. CFE will be represented at the Platform by CFE President, **Professor**

Piergiorgio Valente and **Aleksandar Ivanovski**, Tax Policy Manager at CFE Tax Advisers Europe.

CFE has been a member of the Platform since its inception in 2012 and has benefited from the opportunity to provide its input on many significant taxation issues through its participation at the expert group. CFE accordingly welcomes the Commission's decision to renew the Platform's mandate. Given the technical expertise within the CFE organisation and its status as being a leader in tax knowledge, its participation in the EU Commission VAT Expert Group, EU Commission VAT Forum and UN Committee of Experts in International Cooperation in Tax Matters, CFE looks forward to being able to draw on the direct link it has to the experience of practitioners across the EU and its regular involvement in the areas of tax good governance, double taxation and tax planning to contribute to the valuable work of the Platform.

The selection of the remitted material has been prepared by
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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.

The selection of the remitted material has been prepared by
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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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BRUSSELS I **APRIL 2020**

1. OECD Updates COVID-19 Tax Measures Response Database & G20 Tax Response Report

The OECD has published an updated version of the database containing the details of taxation and financial measures taken by governments around the world in response to the COVID-19 outbreak.

At the virtual G20 meeting held on 15 April, a report was also presented concerning Tax and Fiscal Policy in Response to the Coronavirus Crisis. The report was prepared by the OECD at the request of the Saudi G20 Presidency.

The report details taxation and financial measures taken by governments around the world in response to the COVID-19 outbreak, and a range of tax policy measures that can be employed by administrations to mitigate the impact of the outbreak on economies.

2. Eurogroup Agree on 500 Billion Euro COVID-19 Recovery Package

On 9 April, EU Finance Ministers agreed on a half-trillion Euro recovery package, to be administered by the European Stability Mechanism, which will provide targeted relief for EU economies in response to the COVID-19 outbreak.

The package will provide for precautionary credit lines, an interim solidarity instrument to provide loans to Member States from the EU which aim to protect jobs and employees amidst the COVID-19 crisis. In addition, a pan-European guarantee fund will be implemented by the European Investment Bank, to support EU businesses, in particular SMEs.

European Council President Charles Michel in a statement announcing the agreement, stated that *"the agreement of the Eurogroup is a significant breakthrough. More than half a trillion Euros are now available to shield European Union countries, workers and businesses. With this unparalleled package we shoulder the burden of the crisis together. This compromise is aimed at quick targeted relief."*

3. Platform for the Collaboration on Tax Create Website to Assist Developing Countries Strengthen Tax System

The Platform for Collaboration on Tax, a joint initiative of the International Monetary Fund, the Organisation for Economic Co-operation & Development, the United Nations and the World Bank Group, have now launched a website which aims to disseminate information to assist developing countries to strengthen tax systems and mobilise domestic revenue.

The website contains toolkits, guidance, reports, relevant tax news as well as an extensive database concerning resource mobilisation activities and projects of partners of the Platform for Collaboration on Tax.

The website aims to assist with achieving the Sustainable Development Goals by 2030 and the Addis Ababa Action Agenda.

4. OECD Issues Guidance on Cross-Border Tax Issues Raised by COVID-19

The OECD has published guidance analysing tax treaty implications concerning certain tax issues raised by circumstances surrounding the COVID-19 outbreak.

The guidance examines issues such as potential creation of a permanent establishment or change in the place of effective management on the basis of a cross-border employee carrying out duties remotely, as well as other issues concerning cross-border workers and changes in the residence status of workers.

Pascal Saint-Amans, in a blogpost concerning the guidance stated *"The exceptional circumstances of the COVID-19 crisis call for an exceptional level of coordination and co-operation between countries, notably on tax issues, to mitigate the potentially significant compliance and administrative costs for employees and employers. The OECD encourages countries to work together to alleviate the unplanned tax implications and potential new burdens arising due to effects of the COVID-19 crisis."*

The OECD is examining other issues raised by tax measures concerning cross-border workers, and will continue to update the blog and website with information and guidance.

5. Global Forum on Transparency & Exchange of Information Peer Review Reports Released

The OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes has published peer reviews concerning the compliance of eight jurisdictions with the international standards for exchange of information and transparency. The peer reviews concern the jurisdictions of Barbados, Brunei Darussalam, Liberia, Macau (China), Peru, the Seychelles, Switzerland and Tunisia.

Of the jurisdictions being peer reviewed for the second time, the jurisdictions of Brunei Darussalam, Macau (China) and Switzerland received ratings of largely compliant. Barbados and the Seychelles were downgraded in their second peer review process from largely

compliant to partially compliant. Following their first full review process, Liberia was rated partially compliant and Peru and Tunisia were rated as largely compliant. Further details concerning the ratings can be found here.

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.

6. Forum on Tax Administration Provides Continuity Advice for Tax Administrations

The OECD's Forum on Tax Administration, in collaboration with the Intra-European Organisation of Tax Administrations and the Inter-American Center of Tax Administrations, has published a document setting out business continuity advice for tax administrations in the wake of the COVID-19 pandemic.

The document aims to unite tax administrations through virtual means concerning tax measures implemented to assist taxpayers, as well as to ensure the continuity of tax administration services and to alleviate potential cross-border tax issues.

Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans, reiterated the importance of the FTA's work, stating "*tax administrations globally have a central role to play in supporting taxpayers, governments and the wider economy at this difficult time.*"

7. Comments on Draft Model Rules for Sharing & Gig Economy Published

The OECD has published comments received in response to a public consultation document inviting input on draft Model Rules for Reporting for Platform Operators with respect to Sellers in the Sharing and Gig Economy.

The consultation document invited input on model rules which have been developed with the objective of tax administrations worldwide adopting a uniform set of rules concerning the reporting requirements for transactions and income of platform sellers. The rules have been developed to increase transparency and minimise compliance burdens for tax administrations and taxpayers, in properly recording and taxing activities carried out on digital platforms which may have been previous carried out via the informal cash economy.

8. OECD Publishes BEPS Action 14 Dispute Resolution Reports

In the framework of the work undertaken through BEPS Action 14 and the improvement of tax dispute resolution mechanisms, the OECD has now published Stage 2 peer review reports for jurisdictions in the second batch of reviews, assessing the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project and the recommendations for the jurisdictions in the Stage 1 peer review reports.

The published reports concern the jurisdictions of Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden. 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.

9. Taxing Wages 2020 Report Published

On 30 April 2020 the OECD published its annual flagship report on the rates of tax levied in OECD countries on the wages and salaries of citizens, Taxing Wages 2020.

The report examines rates of taxation and compares, as a percentage share of gross salary, income tax and social security contributions made by employees, social security contributions and payroll taxes paid by employers, as well as any cash benefits received. In addition, the report examines taxes at a household level, comparing rates of taxes across different pay levels and amongst different family configurations, such as families with and without children, and across those households with either single or multiple incomes.

Those wishing to read the report can access it using this link.

10. Albert Rädler Medal 2019: CFE Announces Winner of Academic Excellence Award

CFE Tax Advisers Europe is proud to announce that the Albert J Rädler Medal Award 2019 for academic excellence in European taxation has been awarded to Mr William Criminisi of the Luigi Bocconi University for his Master's thesis entitled "Hybrid Mismatch Arrangements in International Tax Law".

The CFE Albert J Rädler Medal Award 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.

The CFE Academic Jury, composed of Prof. Dr Pasquale Pistone, Prof. Dr Michael Lang and Prof. Dr Otmar Thömmes, stated of the thesis that *"Mr Criminisi's manuscript provides with a comprehensive and in-depth analysis of a very technical topic, such as hybrid mismatch arrangements, supported by comparative legal analysis. The focus on the implementation of BEPS related measures through the ATAD also takes into account the compatibility of the latter with primary law of the European Union. The proposal for issuing secondary EU legislation aligned with IAS/IFRS is constructive and formulated with due consideration of its technical implications and side repercussions."*

The CFE Executive Board and CFE Academic Jury warmly congratulates Mr Criminisi, and wish him the best in his future career.

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BRUSSELS I **MAY 2020**

1. OECD Update on International Work Programme

The OECD held a Tax Talks Webcast in May concerning the recent and upcoming developments in the OECD's international tax work, not only in relation to the tax challenges presented by the COVID-19 crisis, but also as regards continuity on its programme of work.

In relation to progress on the work on taxation of the digital economy, a virtual meeting will be held by the Inclusive Framework in July to discuss progress made by the working groups. Pascal Saint-Amans stated that although one or two countries have requested the work of the OECD on the digital economy be delayed, the majority of other countries see an increased need to progress the work and reach a consensus in accordance with the original timeline, given further unilateral digital taxes being introduced.

It is expected that details of the key policy features will be agreed and made public in October, with the report on the final solution to be produced for the G20 by the end of the year. Good technical progress is reportedly being made in relation to both pillars, with the so-called "building blocks" being examined by the working groups presented during the discussion. However, notwithstanding the progress being made, Pascal Saint-Amans stated he does not exclude some staged process, with some aspects of the package being progressed further in 2021, given the shift in the timeline for agreement to be presented in October.

Speaking recently concerning the trade implications of any agreement at international level, Pascal Saint-Amans reportedly stated *"Interestingly, I would see the impact of COVID on trade as probably pulling some of the teeth out of the mouth of 301, the threat by the U.S. to take sanctions against countries moving unilaterally," Saint-Amans said. "We can see Indonesia, India, Nigeria, Egypt joining France, the U.K., Spain, Italy, Austria, Turkey, and I could name many others that are going to move if we don't have the solution very quickly."*

2. EU Updates List of High-Risk Third Countries

As part of the European Commission's Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing, the Commission published a Revised Methodology for identifying high risk third-countries with deficiencies in their money-laundering and counter terrorist financing regimes. It aims to improve transparency in the process by *" (i) the interaction between the EU and FATF listing process; (ii) an enhanced engagement with third countries; and (iii) reinforced consultation of Member States experts."*

In addition, the Commission has published an updated List of High-Risk Third Countries, by way of Delegated Regulation, in line with its revised methodology. The list has been submitted to the European Parliament and Council for approval, which ordinarily should occur within one month.

The Regulation proposes to add the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the List, and removes from the list Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia. Afghanistan, Iraq, Pakistan, Syria, Trinidad and Tobago, Uganda and Yemen remain on the list.

3. OECD Hosts BEPS Action 13 Consultation Webinar

A digital public consultation was held on 12 – 13 May by the OECD concerning the 2020 review of BEPS Action 13 Country-by-Country reporting, focusing on improvements to the minimum standard for high level transfer pricing risk assessment, BEPS-related risks, and analysis of various aspects concerning the reporting standards.

The public consultation was recorded and can be replayed via the OECD's website.

4. EU to Postpone Reportable Cross-Border Arrangement Deadlines

The European Commission has published proposals for Council decisions to postpone deadlines imposed by the EU Directive on Administrative Cooperation by 3 months, as well as the entry into force of the VAT E-commerce package by 6 months.

This follows on from public requests made by financial and professional association organisations, seeking leniency in the enforcement of penalties and deadlines contained within the Directive due to the extraordinary consequences of the COVID-19 outbreak which have resulted in severe disruption across the European economy.

As concerns the Directive on Administrative Cooperation, the proposal would:

- Defer the time limit for exchanges of information on Reportable Financial Accounts by 3 months, i.e. until 31 December 2020;
- Change the date for the first exchange of information on reportable cross-border arrangements that feature in Annex IV to Council Directive 2011/16/EU from 31 October 2020 to 31 January 2021;

- Change the date for the beginning of the period of 30 days for reporting cross-border arrangements which are included in Hallmarks listed in Annex IV to Council Directive 2018/822/EU from 1 July 2020 to 1 October 2020;
- Change the date for the reporting of the 'historical' cross-border arrangements (i.e. arrangements that became reportable from 25 June 2018 to 30 June 2020) from 31 August 2020 to 30 November 2020.

The Commission has also included in the proposal concerning the Directive on Administrative Cooperation the possibility of extending the reporting deadlines for a further 3 months, depending on the continued evolution of the coronavirus impact on the EU.

As concerns the VAT e-commerce package, the proposals would *"only concern the date of application of the already adopted legal framework of the VAT e-commerce package set out in the VAT Directive. The date of application shall be postponed by six months. This means that the rules shall be applied as of 1 July 2021 instead of 1 January 2021. Consequently, Member States shall adopt and publish their transposition measures by 30 June 2021 instead of 31 December 2020."*

The proposals will be considered by the Council as a matter of priority.

5. Countries Agree on COVID-19 Taxation of Cross-Border Workers

In recent weeks, various countries have agreed on the taxation of cross-border workers during the COVID-19 outbreak period. This follows after OECD guidance was published analysing tax treaty implications concerning certain tax issues raised by the circumstances surrounding the COVID-19 outbreak, such as potential creation of a permanent establishment or change in the place of effective management on the basis of a cross-border employee carrying out duties remotely, as well as other issues concerning cross-border workers and changes in the residence status of workers.

Agreements have been concluded between Belgium and the Netherlands, the Netherlands and Germany and Germany and Belgium, with countries generally agreeing that days worked at home due to COVID-measures would count as days worked in the contracting state. Some agreements deal with more specific cases versus a general agreement. Further agreements are expected to be concluded in the coming weeks.

6. Commission Expands Temporary State Aid Framework

The European Commission has expanded the Temporary State Aid Framework adopted in March 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 Commission has now expanded the Framework to include criteria for Member States to apply when providing recapitalisation and subordinated debt to companies, to protect the EU level playing field.

Concerning the expanded Framework, Executive Vice-President Margrethe Vestager stated *"if Member States decide to step in, we will apply today's rules to ensure that taxpayers are sufficiently remunerated and their support comes with strings attached, including a ban on dividends, bonus payments as well as further measures to limit distortions of competition. And for public transparency, large companies also have to report on the use of aid received and compliance with their responsibilities linked to the green and digital transitions. Because we have to uphold European values and the need for a level playing field to be able to bounce back strongly from this crisis."*

Full details concerning the measures can be found here.

7. UK Publishes Post-Brexit Global Tariff Plan

The UK's revenue authority, HM Revenue & Customs, has published details of the UK tariff, or so-called UK Global Tariff, which will apply on the importation of goods into the UK from 1 January 2021. The UK Global Tariff will replace the EU Common External Tariff.

The new Global Tariff will apply to all imported goods, except where: there is a trade agreement between the UK and country from which the goods are being imported, an exemption or some sort of relief applies, or the goods come from a country which forms part of the Generalised Scheme of Preferences.

The Global Tariff does not include VAT or any other import duties that may be payable, nor does it take into account anti-dumping or other sorts of restrictions that may apply.

8. EU Tax Package Delayed Until July 2020

EU Commission proposals previously anticipated to be published on 10 June of this year are now set to be released on 15 July. An indicative planning document details that the Commission's Anti-Fraud Package and Customs Union Package are expected to be published in mid-July, though the agenda notes that this is yet to be confirmed.

The Anti-Fraud Package will be comprised of:

- Communication on an 'Action Plan to fight tax evasion and to make taxation simple and easy';
- Communication on 'Tax good governance in the EU and beyond', encompassing the external action strategy towards third countries, and possible, some intra-EU aspects;
- Revision of the Directive on automatic exchange of information – DAC7, which concerns reporting on income derived from online platforms (both direct and indirect tax aspects), which coincides with work undertaken by OECD's Working Party 9 and 10 on voluntary model rules for reporting of online platform activities.

The Customs Union Package will be comprised of an Action Plan on the Customs Union and a legislative proposal on the Customs Single Window.

9. EU Confirms Enlargement with Western Balkans at Zagreb Summit

At the EU-Western Zagreb Balkans Summit, a highlight of the Croatian EU Presidency unfortunately forced to be held virtually in light of the Coronavirus outbreak, the EU affirmed its commitment to a European vision for the Western Balkans.

President Ursula von der Leyen, speaking at the press conference following the Summit stated *"This Summit, even if it is virtual, is a testimony of the importance the European Union gives to the region. And it is a testimony that the Western Balkans are an absolute priority for the European Union and for my Commission. The Western Balkans belong in the EU. There is no question for us about this. And this is why I firmly believe that the European Union has a special responsibility in assisting its partners in the region."*

During the Summit, the Zagreb Declaration was concluded, under which the EU Member states have promised a 3 Billion Euros package to the Western Balkans to support the post-coronavirus crisis recovery of the region, conditioned with a commitment by the Western Balkans governments to uphold European values and principles and carry out necessary legal and socio-economic reforms to meet those values.

10. Czech Republic, Indonesia & Korea Ratify OECD MLI

The Czech Republic, Indonesia and Korea have deposited 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. There are now 94 jurisdictions covered by the Convention, with 45 countries having ratified, approved or accepted the MLI.

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BRUSSELS I **JUNE 2020**

1. US Withdraws from International Digital Tax Negotiations

On 17 June US Trade Representative Robert E. Lighthizer confirmed that the US was withdrawing from OECD Inclusive Framework discussions on taxation of the digital economy. The decision was communicated to European Finance Ministers in a letter last week, igniting fears of a trade war between the EU and US.

The OECD published a public statement in response to the developments, with OECD's Secretary-General, Angel Gurría, stating *"All members of the Inclusive Framework should remain engaged in the negotiation towards the goal of reaching a global solution by year end…Absent a multilateral solution, more countries will take unilateral measures and those that have them already may no longer continue to hold them back. This, in turn, would trigger tax disputes and, inevitably, heightened trade tensions. A trade war, especially at this point in time, where the world economy is going through a historical downturn, would hurt the economy, jobs and confidence even further. A multilateral solution based on the work of the 137 members of the Inclusive Framework at the OECD is clearly the best way forward."*

EU Commissioner for the Economy, Paolo Gentiloni, responded to the decision stating "*We need a digital tax adapted to the reality of the new century. An agreement is needed in the global negotiations. If the American withdrawal makes it impossible, the EU Commission will put a new European proposal on the table".* A failure to agree an agreement at international level will very likely lead to a raft of further unilateral digital taxes being introduced, and retaliatory tariffs, escalating to trade wars.

A virtual meeting of the Inclusive Framework is scheduled to take place in July to discuss progress made by the working groups. It was expected that details of the key policy features would be agreed and made public in October and a report produced for the G20 by the end of the year on the final solution agreed on by the Inclusive Framework.

2. EU Commission COVID Recovery Package

The EU Commission recently presented its recovery package proposal to "repair and prepare" the European Union following the impact of the coronavirus crisis on the EU economy. The package comprises a new recovery instrument, the Next Generation EU, embedded within the EU budget for 2021 – 2027, as well as specific reforms to the EU budget itself. An updated Work Programme was also published alongside the proposals.

750 Billion Euros will be raised by the Next Generation EU recovery instrument, by lifting the ceiling on own borrowing on the open market, with funds to be invested in EU programmes and repaid from EU budgets between 2028 and 2058. The fund will support Member State investments and reforms, incentivise private investment and strengthen EU healthy security and prepare for future crises. The fund will invest in programmes that align with EU policy priorities; in particular the European Green Deal, in circular economy and renewable energy projects, as well as in projects that strengthen the Single Market and the EU's digital and technological presence.

Further details are available here.

3. OECD Publishes Report on Restorative Planning by Tax Administrations

The OECD has published a report prepared by the Forum on Tax Administration in co-operation with the Intra-European Organisation of Tax Administrations and the Inter-American Center of Tax Administrations concerning how tax administrations can benefit from significant early business restoration planning for the recovery period from the coronavirus crisis. The report was published alongside another report highlighting the significant security, fraud and privacy risks posed by the crisis.

Director of the Centre for Tax Policy & Administration of the OECD, Pascal Saint-Amans, commented that *"Early planning for the recovery period from COVID-19 is critical given the scale of the challenges and risks that lie ahead. The collaborative work being undertaken by the FTA, CIAT and IOTA, including outreach to developing countries, is vitally important in helping to mitigate those risks as well as identify opportunities to increase the effectiveness and efficiency of tax administration in a post-crisis world."*

The Forum on Tax Administration are working on identifying future priorities, in particular concerning digitalization of tax administrations, difficulties concerning taxpayers working cross-border, as well as further issues arising from business continuity and recovery considerations.

4. EU Cross-Border Arrangement Reporting Deferral Directive Enters Into Force

The proposal as agreed by Member States in early June to defer deadlines for exchange of information under the administrative cooperation directive as a result of the coronavirus crisis has now been published in the Official Journal of the European Union and has entered into force.

The Directive provides the option for Members States to postpone deadlines imposed by the EU Directive on Administrative Cooperation for reporting of relevant cross-border arrangements by 6 months. The Directive also provides that the Council can agree to extend

the deadlines in the Directive by a further 3 months, if required by the circumstances surrounding the coronavirus.

The Directive allows Member States to defer deadlines arising out of the Directive as follows:

- Defer time limit for exchange of information on Reportable Financial Accounts from 30/09/2020 to 31/12/20 (note: DAC2 – CRS)
- Defer date for 1st exchange of DAC6 information from 31/10/20 to 30/04/21
- Defer date for beginning of 30 days period for reporting cross-border arrangements from 01/07/20 to 01/01/21
- Defer date for reporting 'historical' arrangements (that became reportable from 25/06/18 to 30/06/20) from 31/08/20 to 28/02/21

Certain Member States have already proceed to introduce legislation transposing the extension to the reporting deadline into domestic law.

5. Platform for Collaboration on Tax Issues Toolkit on Taxation of Offshore Indirect Transfers

The Platform for Collaboration on Tax Issues have issued a Toolkit on the Taxation of Offshore Indirect Transfers, concerning the design and implementation issues on taxing offshore indirect transfers.

The Toolkit aims in particular at addressing concerns of developing countries which are rich in natural resources, surrounding the indirect transfer of assets related to the natural resources, and suggests models for domestic legislation incorporating taxation of offshore indirect transfers.

6. IBFD Launches 2019 Yearbook on Taxpayers' Rights

On 8 June, the IBFD published the 2019 Yearbook on Taxpayers' Rights, the most recent compilation of information by the Observatory on the Protection of Taxpayers' Rights concerning global developments in the protection of taxpayers' rights.

The release of the 2019 report is accompanied by video presentations recorded by Prof. Dr Pasquale Pistone, Prof. Dr Philip Baker and Prof. Dr Carlos E. Weffe examining global developments and identifying recent trends in taxpayers' rights protection.

The report and videos can be viewed here.

7. UN Committee of Experts on Tax Matters June Session Meeting

The UN Committee of Experts on International Cooperation on Tax published the agenda and session papers ahead of their 20th Session meeting, which was held virtually between 22 and 26 June.

The session addressed progress on updating the Model Double Taxation Convention and Transfer Pricing Manual, as well as on new guides being developed on tax dispute avoidance

and resolution and environmental taxation. Issues related to the digitalisation of the economy and sustainable development goals were also discussed at the Session.

8. EU Commission Publishes Brexit Update

The European Commission has published an updated Notice to Stakeholders concerning the EU rules applicable to services in light of the UK withdrawal from the EU.

The Notice confirms that during the transition period the UK continues to be subject to the EU VAT Directive in respect of transactions for services made during this period. Thereafter, the Notice sets out that for supplies of services, suppliers from the UK will need to register under the mini-one-stop-shop as a supplier in the relevant Member States. Additionally, requests for cross-border VAT refunds between the UK and Member States will be subject to the 13th VAT Directive following the transition period.

A EU-UK statement issued last week confirms that the UK will not entertain an extension of the transition period, and states that significant progress still needs to be made to agree an exit deal. It indicates that negotiations will be intensified in the coming months.

9. US Launches Trade Investigations Into Countries with Digital Taxes

The Office of the US Trade Representative has announced the US will be carrying out investigations under Section 301 of its 1974 Trade Act concerning digital services taxes that have either been adopted or are being considered at political level by a number of countries worldwide. The jurisdictions listed include: Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom.

A similar investigation was carried out by the US in 2019 into the French digital services tax, following the French digital tax being signed into law on 24 July 2019. Threats of retaliatory tariffs escalating into a trade war were avoided after an agreement was reached in January 2020, in which the US 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.

10. CFE Reappointed to the EU Platform for Tax Good Governance Expert Group

CFE Tax Advisers Europe is pleased to announce that it has been appointed as a **non-governmental member of the European Commission's Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation**. The Platform was established by the European Commission in order to seek advice and assistance from expert stakeholders in the field of tax good governance, aggressive tax planning and double taxation. The Platform also provides an opportunity for members to exchange views and have an open dialogue with the European Commission concerning significant taxation issues facing the tax profession and wider society.

CFE is honoured to be among the limited number of non-governmental members and to be the only organisation of advisers in the professional tax field selected to participate in the important work the Platform carries out. In line with Commission Decision 2019/C 428/08 on the renewal of the platform's members, CFE's mandate at the Platform for Tax Good

Governance will run **until 31 October 2022**, after which time CFE will have the possibility to renew its participation. CFE will be represented at the Platform by CFE President, **Professor Piergiorgio Valente** and **Aleksandar Ivanovski**, Tax Policy Manager at CFE Tax Advisers Europe.

CFE has been a member of the Platform since its inception in 2012 and has benefited from the opportunity to provide its input on many significant taxation issues through its participation at the expert group. CFE accordingly welcomes the Commission's decision to renew the Platform's mandate. Given the technical expertise within the CFE organisation and its status as being a leader in tax knowledge, its participation in the EU Commission VAT Expert Group, EU Commission VAT Forum and UN Committee of Experts in International Cooperation in Tax Matters, CFE looks forward to being able to draw on the direct link it has to the experience of practitioners across the EU and its regular involvement in the areas of tax good governance, double taxation and tax planning to contribute to the valuable work of the Platform.

The selection of the remitted material has been prepared by
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia

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GTAP tax advisers global platform

2020 ACTIVITY REPORT

CFE tax advisers europe

AOTCA

UNION DES ORDRES FISCAUX DE L'AFRIQUE DE L'OUEST
WEST AFRICAN UNION OF TAX INSTITUTES
WAUTI
UDOFAO

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ABOUT US

The **Global Tax Advisers Platform (GTAP)** was established in 2013 by CFE Tax Advisers Europe (formally known as the Conféderation Fiscale Européenne), the Asia-Oceania Tax Consultants' Association (AOTCA) and the West African Union of Tax Institutes (WAUTI).

GTAP is an international platform, representing more than 700,000 tax advisers in Europe, Asia and Africa, that seeks to bring together national and international organizations 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.

OUR MEMBERS

Asia-Oceania Tax Consultants' Association (AOTCA)

AOTCA represents 330,000 tax advisers from 20 professional bodies in 16 countries in the Asian-Pacific region. AOTCA safeguards the professional interest of tax advisers in order to assure the quality of tax services provided to the public. AOTCA promotes the development of the national laws governing the profession, exchanges information about national tax and professional laws and the development of the tax and professional law in Asia and Oceania and maintains relations with the authorities at national and international levels.

CFE Tax Advisers Europe

Founded in 1959, CFE brings together members from 30 national organisations in 24 European countries, representing more than 200,000 tax advisers. CFE strives to contribute to the co-ordination and development of tax law in Europe by sharing the unique insight of our members with European institutions, and to promote the co-ordination of national laws that govern and safeguard the tax adviser profession.

West African Union of Tax Institutes

The West African Union of Tax Institutes (WAUTI) has been set up by the Chartered Institute of Taxation of Nigeria (CITN) and the Chartered Institute of Taxation of Ghana (CITG) in collaboration with revenue agencies in the West African Region. WAUTI creates a forum for technical and educational development, information sharing and enhancement of Tax Practice and Administration.

OUR MEMBERS

International Association of Financial Executives Institutes (IAFEI)

IAFEI is a worldwide professional association of national financial executives institutes established in 1969. Its founding members include financial executives institutes of Argentina, Australia, Belgium, France, Germany, Italy, Mexico, Peru, Philippines, Spain, United Kingdom and the combined Institutes of USA and Canada.
Collectively, the institutional members of IAFEI represent more than 20,000 finance executives thus making it the global premier society of finance executives.

Arc Méditerranéen des Auditeurs (AMA)

The Arc Méditerranéen des Auditeurs (AMA) is a European cross-border professional organization which brings together regional institutions representing auditors as well as other accounting professionals. AMA was founded in 1992 with the aim of institutionalizing the relationships which had been informally established between some of its current members. Today, AMA has 25 members, namely professional institutions established in countries on the Mediterranean shore (Spain, France and Italy).

Society of Trust and Estate Practitioners (STEP)

The Society of Trust and Estate Practitioners (STEP) is a global professional body, comprising lawyers, accountants, financial advisors and more, From drafting a will to advising on issues concerning international families, protection of the vulnerable, family businesses and philanthropic giving. STEP's primary purpose is to provide confidence to families by setting standards, training and educating its members, and upholding those standards.

GOVERNANCE

Professor Piergiorgio Valente
Chairman of the Global Tax Advisers Platform
President of CFE Tax Advisers Europe

Euney Marie J. Mata-Perez
Counselor of the Global Tax Advisers Platform
President of the AOTCA

Gladys Olajumoke Simplice
Counselor of the Global Tax Advisers Platform
President of WAUTI

Aleksandar Ivanovski
Secretary General of the Global Tax Advisers Platform
Tax Policy Manager at CFE Tax Advisers Europe

Jiří Nekovář
Advisor to the Global Tax Advisers Platform
Founder of Euro-Trend

David Russell QC
Advisor to the Global Tax Advisers Platform
Chairman of STEP Australia

Saliou Dieye
Advisor to the Global Tax Advisers Platform
Honorary Secretary of WAUTI

OUR LATEST ACHIEVEMENTS

In 2019, GTAP held its first **Global Conference**, held in Turin, 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.

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.

OUR LATEST ACHIEVEMENTS

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.

ROLE & MISSION OF THE GLOBAL TAX ADVISERS PLATFORM

Proposal of a New Tax System

Inclusiveness, Openness, Global Reach

Position of Tax Professionals in the Tax Scenario

Impact on the Renovation of the International Tax Scenario

Safeguard Taxayers' Rights

Strong Cooperation Among Tax Professionals

GTAP aims to bring tax professionals together under the banner of a single representative organisation, in order to influence the global tax policy debate. GTAP achieves this by issuing joint opinions on issues of international relevance which carry increasingly more weight, as more associations from around the world join GTAP.

GTAP IN REVIEW

1) **Opinion Statements**..

- Opinion Statement on the OECD Consultation regarding Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Offshore Structures...

- Opinion Statement on the OECD Consultation on Draft Report on Tax Morale...

- Opinion Statement on the Tax Consultation Concerning the Draft Transfer Pricing Toolkit for Developing Countries..

- Opinion Statement on the OECD Consultation on a Unified Approach to Taxing the Digital Economy under Pillar One..

2) **Articles**...

- The Ulaanbaatar Declaration: 10 Key Priorities in International Taxation Identified by the Global Tax Advisers' Platform (GTAP)..

- Cooperazione internazionale tra i consulenti fiscali nella Dichiarazione di Ulaanbaatar...

- The "Torino-Busan Declaration": Identifying Priorities in an International Setting for Tax Professionals and Taxpayers..

3) **Declarations** ....

- The St Petersburg Declaration (2013) ....
- The Ulaanbaatar Declaration (2018) ....
- The Torino-Busan Declaration (2019) ....

GTAP IN REVIEW

4) Conferences ....

- The GTAP Inaugural Conference (programme)..
- WAUTI 7th International Tax Conference (programme) ....

5) Other Publications..

- Monthly releases - Global Tax Top 10 ....

6) Other Initiatives..

7) GTAP Meetings..

OPINION STATEMENTS

ARTICLES

DECLARATIONS

CONFERENCES

OTHER PUBLICATIONS

OTHER INITIATIVES

- **Meeting at the UNIDROIT for the Human-Centred Business Model (HCBM) on 16 April 2019 in Rome with the Project Coordinator and a team of experts involved in the project;**
- **GTAP joined as Partner for the Fiscal Pillar to the Human-Centred Business Model (HCBM) - as of May 7, 2019.**

GTAP MEETINGS

- **Meeting on 19 April 2018 in Brussels, Belgium;**
- **Meeting on 12 September 2018 in Ulaanbaatar, Mongolia;**
- **Meeting on 28 September 2018 in London, United Kingdom;**
- **Meeting on 18 October 2018 in Rome, Italy, at the occasion of the Italia Africa Business Week;**
- **Meeting on 6 June 2019 in Brussels, Belgium;**
- **Meeting on 4 October 2019 in Torino, Italy;**
- **Meeting on 16 October 2019 in Busan, South Korea;**
- **Meeting on 26 – 27 November 2019 in Milan, Italy, at the occasion of the Italia-Africa Business Week.**

CFE tax advisers europe

Committee Meetings

Fiscal Committee:

- Friday 31 January 2020 in Brussels
- Thursday 18 & Friday 19 June 2020 on Zoom

Professional Affairs' Committee:

- Friday 31 January 2020 in Brussels
- Wednesday 20 May 2020 on Zoom

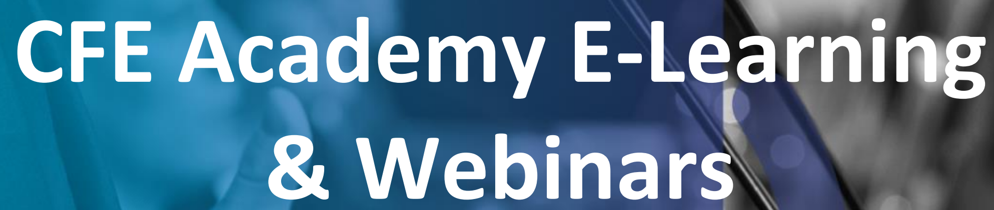
Tax Technology Committee:

- Friday 31 January 2020 in Brussels
- Thursday 05 March 2020 on Zoom
- Wednesday 10 June 2020 on Zoom

New Tax Professionals Committee:

- Friday 07 February 2020 in Milan
- Friday 20 March 2020 on Zoom
- Wednesday 20 May 2020 on Zoom

CFE tax advisers europe



CFE Academy E-Learning & Webinars

CFE – CNDCEC E-Learning Courses Recordings – January – June 2020

- Giampiero Guanerio - The New Italian GAAR – Implementation of the EU Anti-Tax Avoidance Directive in Italy
- Paul Kraan - Anti-hybrid Provisions as Laid Down in the EU Anti-Tax Avoidance Directive
- Bruno Gouthiére – International Tax Transparency
- Jos Goubert – International Tax Avoidance
- Ian Hayes - Digitalisation of Tax Administrations and Implication for Tax Advisers
- Aleksandar Ivanovski – EU Tax Policy: The Tax Policy Initiatives & Priorities of the New EU Commission
- Howard Leibman – International Tax: The OECD BEPS Project
- Aleksandra Heinzer – VAT Fraud - Missing Trader & Carousel Fraud
- Isabelle Richelle – EU Tax Dispute Settlement Mechanisms

CFE – CNDCEC E-Learning Webinars – January – June 2020

- **28 May - CFE Academy Concluding Webinar** - Tax Residence, Permanent Establishment and Transfer Pricing: New Challenges and Opportunities for Tax Professionals. **Speakers:** Piergiorgio Valente, Ian Hayes, Stella Raventós-Calvo & Ivan Simic

- **4 June – European Register Webinar** – VAT in Practice – News, Opportunities & Challenges. **Speakers:** Jeremy Woolf, Trudy Perié & Raffaele Rizzardi