



BRUSSELS

DECEMBER

2020

EU Parliament Calls for Wider Scope on EU Tax Blacklist

On proposal of the Permanent Subcommittee on Tax Matters (“FISC”), European Parliament’s Economic Affairs Committee adopted a [resolution](#) calling for stricter and legally binding EU rules on non-cooperative jurisdictions for tax purposes, criticising the listing process at present as ‘lenient and confusing’.

The resolution welcomes the legal link between tax good governance standards and the use of EU funds and calls for State Aid rules and Member States’ national support programmes to be linked in order to ensure businesses with ties to listed jurisdictions are not eligible for support. The European Commission was criticised for failing to introduce effective measures that would reduce tax avoidance incentives. Taking into account the negotiations on Pillar II at OECD/ Inclusive Framework level, the European Parliament proposed that the Commission introduce the following measures with a separate legislative proposal:

- a) Non-deductibility of costs;
- b) Reinforced Controlled Foreign Company (CFC) rules;
- c) Withholding tax measures;
- d) Limitation of participation exemption;
- e) Switch-over rule;
- f) Reversal of the burden of proof;
- g) Special documentation requirements, especially regarding transfer pricing.

In addition, the Parliament supported screening/ inclusion of the United Kingdom in the blacklisting process once the Brexit transitional period has lapsed, thus extending the geographical scope of the process, albeit excluding the least developed countries.

Commenting, Chair of the Subcommittee on Tax Matters, Paul Tang (The Netherlands) said that EU countries are responsible for 36% of tax havens: “By calling the EU list of tax havens “confusing and inefficient”, the European Parliament tells it like it is. While the list can be a good tool, it is currently lacking an essential element: actual tax havens. Countries on the list account for just 2% of corporate tax avoidance! EU member states currently decide in secret which countries are tax havens, and do so based on vague criteria with no public or parliamentary scrutiny. This needs to change. If we focus on others, we also need to look ourselves in the mirror. And what we see is not pretty. EU countries are responsible for 36% of tax havens. The tax subcommittee commits itself to investigate and scrutinise all member states that are responsible for tax avoidance. Our work is only just starting.”

2020 Global Forum on Tax Transparency Plenary Meeting

The Global Forum on Tax Transparency and Exchange of Information, an Inclusive Framework body established to support the process of strengthening the capacity of tax administrations to exchange information and fight tax evasion and avoidance, held its annual plenary meeting virtually from 9 -11 December. According to the [Peer Review of the Automatic Exchange of Financial Account Information](#) 88% of jurisdictions engaged in automatic exchange since 2017-18 with satisfactory legal frameworks in place, which denotes a significant milestone in fight against tax evasion.

“The Global Forum continues to be a game-changer. In spite of the COVID-19 crisis, it has successfully delivered on the global peer review process, offering further proof that automatic exchange is becoming the global standard. Ensuring

access to financial account information for tax administrations helps ensure everyone pays their fair share of tax, boosting revenue mobilisation for countries worldwide, and particularly for developing countries.”, said OECD Secretary-General Angel Gurría.

EU Leaders Reach Agreement on Long Term Budget

The leaders of the European Union reached an agreement on the long-term budget, effective 1 January 2021, i.e. EU's multi-annual financial framework (MFF). In addition, the agreement encompasses a recovery package for the EU. The agreement was [confirmed](#) by the European Council President Charles Michel on 10 December.

German Chancellor Angela Merkel, who holds the EU Presidency at present, was instrumental in securing a balanced outcome that satisfies the rule-of-law requirements demanded by the EU and most western Member states and the criticism of such an approach led by Poland and Hungary. According to the compromise, Poland and Hungary were able to support the budget until the European Court of Justice rules on the legality of making the use of EU budget funds contingent upon respect of rule of law by all Member states. Hungary and Poland previously vetoed the budget, demanding that the use of EU funds is not contingent on specific 'rule-of-law' requirements.

The final approval of the EU budget is subject to consent by the European Parliament and national parliaments, in addition to the required consensus for the €672.5 billion recovery fund to become operational. In the interim, EU leaders requested from the European Commission to refrain from enforcing the rule-of-law requirements against Poland and Hungary pending any challenge in the Court of Justice of the European Union.

OECD Publishes 2020 Tax Revenue Trend Report

The OECD has now published the [Revenue Statistics 2020](#) report, its annual report which provides information comparing taxation revenue across OECD jurisdictions. The report demonstrates that the tax to GDP ratio fell across all OECD jurisdictions for the first time in over a decade, with a larger decrease forecast for 2020 in light of the coronavirus crisis.

Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans, commented on the report, “Since the global financial crisis of 2008, we have seen a consistent trend of increasing tax revenues in the OECD, which have decreased slightly in 2019 for the first time. We expect to see much sharper decreases next year when the impact of COVID-19 starts to become more apparent. At some point, when the health crisis has passed and the economic recovery is underway, governments will need to reconsider whether their tax systems are up to the challenges of the post-pandemic environment.”

[Applications Open: CFE's 2020 Albert J Raedler Medal Award](#)

Submissions are now invited for **CFE's 2020 Albert J. Rädler Medal Award**. The award was established in 2013 in order to encourage and reward academic excellence in European taxation, as well as to recognise Professor Albert J. Rädler's esteemed contribution to the field of taxation within Europe. In order to be eligible to apply, an applicant must have completed a Master's thesis in European taxation which received a distinction in the relevant calendar year, and be 30 years or under on the 31st December of that relevant year. The thesis should be written in English or, in the alternative, an English translation must be provided. The examining panel is composed of Professors Michael Lang and Pasquale Pistone, both of the Vienna University of Economics and Business, as well as of Professor Otmar Thömmes, Tax Partner at Deloitte Munich.

The successful applicant will be announced at the virtual CFE Forum on 6 May 2021 and will be awarded with the medal at an Award Ceremony which will take place at the **CFE Professional Affairs Conference** convened in Zagreb, Croatia on 3 December 2021. In addition to the Albert J. Rädler medal itself, the

recipient will be offered travel costs to Zagreb in order to attend the 2021 CFE Professional Affairs Conference, as well as a selection of premium technical literature from our partner IBFD.

Please send the applications until 15 March 2021 to the attention of Ms. Karima Baakil via email at: info@taxadviserseurope.org

EU Council Conclusions on EU Tax Challenges

The Council of the EU has adopted [conclusions](#) on “fair and effective taxation in times of recovery, on tax challenges linked to digitalisation and on tax good governance in the EU and beyond”.

The conclusions emphasise the importance of fair and efficient tax systems in recovery from the coronavirus crisis, and the role of EU Green Deal in the recovery. The Council also reiterated support for EU participation in the ongoing OECD negotiations to agree an international solution to the challenges posed by the digital economy and urged the Commission to be ready with legislative solutions required following the outcome of negotiations.

The Council in its report also expresses support for the Commission proposals concerning extending the scope of the directive on administrative cooperation in tax matters, to extend exchange of information to the platform economy and e-assets, in the DAC7 and DAC8 proposals.

Chile Deposits Instrument of Ratification for OECD's BEPS MLI

Chile has now deposited its instrument of ratification for the [OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting \(MLI\)](#).

The MLI entered into force in July 2018, after being concluded in 2016. The MLI implements tax treaty measures which update international tax rules and aims to restrict opportunity for tax avoidance by implementing minimum tax standards and improving dispute resolution mechanisms. 94 jurisdictions are now covered by the MLI, with 57 having ratified the convention.

The multilateral tax treaty allows jurisdictions to update their existing double tax treaties and transpose measures agreed in the BEPS project without further need for bilateral negotiations. It now extends to over 1,650 bilateral tax treaties.

CFE's Tax Advisers' Professional Affairs Virtual Conference

CFE's [13th European Webinar Conference](#) on Tax Advisers' Professional Affairs was held virtually on Monday, 30 November 2020, on the topic of "Taxpayer Rights and Legal Certainty in the Digital Era", examining European and global developments in the protection of taxpayers' rights and the impact and implications of technology on taxpayers' rights.

The virtual conference welcomed tax experts and academics, with a panel featuring: Dr Philip Baker QC, Barrister, Queen's Counsel, Field Court Tax Chambers and Visiting Professor, Oxford University, United Kingdom; Professor Nataša Žunić Kovačević Professor, Faculty of Law, University of Rijeka, Croatia; Paul Kraan, Partner, Van Campen Liem, The Netherlands; and Albert Raedler, Policy Officer, DG TAXUD, European Commission. The conference was moderated by Wim Gohres, the outgoing Chair of the CFE Professional Affairs Committee.

Prof. Dr Philip Baker QC opened the conference by introducing to participants the IBFD Yearbook on Taxpayers' Rights and discussed other pertinent issues concerning taxpayer rights, such as the relevance of Article 47 of the EU Charter of Fundamental Rights vis-à-vis (non)inclusion of tax proceedings under Article

6 ECHR and whether a dedicated European tax court would be desirable from taxpayers' rights protection perspective.

Paul Kraan then discussed taxpayers rights in the context of the DAC6 EU Mandatory Disclosure Rules, in particular in relation to the right of confidentiality and professional privilege. He also discussed safeguards for taxpayers found in EU caselaw.

Prof. Dr. Sc. Nataša Žunić Kovačević presented to attendees relevant aspects of the Croatian response to the IBFD Observatory on the Protection of Taxpayers' Rights and recently introduced institute of Croatian tax procedural law advance tax rulings as means of tax certainty.

Albert Raedler closed the conference by introducing the Roadmaps published by the European Commission concerning a planned Communication taking stock of taxpayers' existing rights in the EU and Recommendation to Member States to facilitate the implementation of taxpayers' rights and simplify tax obligations. The planned initiatives form part of the Commission's Tax Package Action Plan, within the section on Simplifying EU Tax Rules for Competitiveness in the Single Market. The initiatives aim to improve awareness of taxpayers' rights throughout the EU, and the Recommendation will reflect on how Member States may accommodate their tax laws' related procedures to better respect and make more effective such rights. The projects will also examine how Member States can improve the relationship between taxpayers' and tax administrations. Mr Raedler explained that a public consultation will take place in 2021 concerning the project.

[African Tax Administration Forum Toolkit for Exchange of Information](#)

The African Tax Administration Forum & OECD's Global Forum have created a [Toolkit for Establishing and Running an Effective Exchange of Information Function](#). The toolkit has been designed to assist developing countries in both

establishing and improving exchange of information carried out by tax administrations, and contains policy information and guidance to address tax evasion through improved cooperation between tax administrations.

The Executive Secretary of ATAF, Mr Logan Wort, said of the Toolkit, “ATAF is working overtime in ensuring that EOI becomes a top priority of African tax administrations which should ultimately lead to increased revenue collection. In putting together this Toolkit, we are effectively equipping our members with a comprehensive and practical set of guidelines to enhance their EOI efforts.”

AG Kokott: Belgian Excess Profit Rulings Constitute 'State Aid Scheme'

Advocate General Kokott issued an [Opinion in Case C-337/19 P *Commission v Belgium and Magnetrol International NV*](#) (Belgian Excess Profit Rulings). According to AG Kokott, the Commission rightly classified the Belgian practice of downward adjustments to profits of multinational group companies as a State aid scheme. The opinion recommends that the Court of Justice sets aside the judgment of the General Court of the EU and reassess the cases brought by Belgium and the aid beneficiary.

Key issue in the appeal was whether the General Court rightfully held that the Commission had not demonstrated to the requisite legal standard the existence of a ‘consistent tax administration practice in the contested decision’. In the judgment under appeal, the General Court repealed Commission decision on grounds of failure to state reasons as to the choice of advance rulings used, in particular why 6 examples chosen by the Commission were sufficiently representative of all 66 advance rulings under scrutiny. According to the Advocate General, contrary to the view of the General Court, the Commission sufficiently demonstrated in its decision that its sample is representative and thus sufficient to indicate a consistent administrative practice of the Belgian tax administration. In addition, the General Court erred in concluding that the two

further conditions for the existence of a State aid scheme were not met: that no further implementing measures are required and that the beneficiaries are defined in a general and abstract manner. AG Kokott therefore opined that the General Court erred in law by wrongly classifying the sample as not sufficiently representative to the requisite legal standard, and not sufficient to demonstrate a consistent administrative practice.

Even if the Court of Justice were to find that all the conditions for the existence of an aid scheme were met, the General Court would still have to assess the pleas in law, i.e. whether the advance tax rulings concerning the downward adjustment of profits constitute State aid, and subsequently, whether the recovery of the alleged aid infringes the principles of legality and of the protection of legitimate expectations. Therefore the Opinion advises the Court of Justice to refer the case back to the General Court.

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