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G20 Summit Leaders' Declaration on OECD's Two-Pillar Solution

Following on from the 17th G20 Summit, which was held in Indonesia from 15 - 16 November, the leaders issued a [G20 Bali Leaders' Declaration](#) reaffirming international commitment to the implementation of the OECD Inclusive Framework's [Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#).

Leaders in the declaration welcomed progress on Pillar One and Two, and reaffirmed their commitment to completing the GloBE Implementation Framework establishing administrative and safe-harbour rules for MNEs and tax authorities. The leaders further called on the Inclusive Framework to finalise the outstanding work packages under Pillar One, and sign the Multilateral Convention in the first half of 2023, as well as to complete negotiations on the Subject to Tax Rule under Pillar Two to allow the development of a multilateral instrument for implementation.

The leaders also expressed their commitment to "strengthen the tax and development agenda in light of the July 2022 G20 Ministerial Symposium on Tax and Development", as well as to implementing internationally agreed tax transparency standards, setting out their support for the Crypto-Asset Reporting Framework and called on the OECD to conclude work on the implementation packages, including timelines.

EU Adopts Revised Code of Conduct on Business Taxation

EU Finance ministers [approved last week](#) the revised Code of Conduct on Business Taxation, setting out stricter criteria for evaluation of harmful tax regimes. The revised code of conduct introduces scrutiny on 'tax features of general application', thus expanding the existing focus on 'preferential measures'.

Per the [revised rules](#), when assessing whether a tax feature of general application of a Member State is harmful, the evaluation will focus on tax features of general application which are not accompanied by appropriate anti-abuse provisions, and which lead to double non-taxation or allow the double or multiple use of tax benefits in relation to the same expense, income or transactions. The Code also introduces scrutiny on the tax measures of general application of the tax system that affect the location of business activity in the European Union.

Some of the tax measures covered by the Code will fall within the scope of the provisions on State aid (Articles 107 - 109 TFEU). Given that application of primary Union law takes precedence, in cases where the Commission has initiated state aid proceedings, the Code of Conduct Group shall suspend its examination of the tax measures until the end of that state aid procedure.

Commenting, the Czech Finance Minister and Chair of ECOFIN, said: *"We confirmed today our commitment to a fairer tax environment in the EU by reinforcing the rules we apply when tackling harmful tax practices in an evolving economy. Our experts in taxation constantly look out for harmful tax practices. Since starting its work in 1997, the code of conduct group succeeded in eliminating around 140 harmful tax practices within the EU. The code of conduct of business taxation has not been amended since 1997 and today's agreement further improves its effectiveness also in the light of the recent international tax*

reform", said Zbyněk Stanjura, Minister of Finance of the Czech Republic, currently presiding with the Council.

ECJ Rules Public Access to Beneficial Ownership Registry Information Invalid - Joined Cases C-37/20 & C-601/20

The European Court of Justice last week [ruled](#) in joined cases C-37/20 & C-601/20 *WM and Sovim SA v Luxembourg Business Registers* that a provision in Luxembourg's national legislation implementing the EU Anti-Money Laundering Directive (Directive (EU) 2018/843) rules requiring that information contained in the beneficial ownership registry be made accessible online for all members of the public was invalid.

The Court held that the provision was invalid in light of its serious interference with the fundamental rights to respect for private life and to the protection of personal data, enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. The Court held that the interference of the anti-money laundering legislative provision with the above rights guaranteed by the Charter was neither limited to what was strictly necessary nor proportionate to the objective pursued by the anti-money laundering legislation. As such, the Court has by its decision struck down the requirement under AML rules that Member States must ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the general public.

The decision of the Court to strike down the anti-money laundering legislative provision may have implications for EU tax legislation in future decisions of the Court, in the instance that any provision in existing or proposed tax legislation also infringes upon articles within the Charter of Fundamental Rights of the European Union.

28 Jurisdictions Sign Agreement on Reporting Income from Digital Platforms

The plenary meeting of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes was held from 9 - 11 November in Seville, Spain. At the periphery of the plenary meeting, a multilateral competent authority agreement (MCAA) for the automatic exchange of information under the [OECD Model Rules for Reporting by Digital Platforms](#) was signed by 22 jurisdictions. The agreement provides for the automatic exchange of information from operators of digital platforms of transactions and income by sellers using these platforms.

Additionally, 15 jurisdictions signed a further multilateral competent authority agreement for the [Model Mandatory Disclosure Rules on Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures](#) (*CRS Mandatory Disclosure Rules*), enabling an annual automatic exchange of information identifying arrangements that aim to circumvent the CRS or which seek to disguise beneficial owners of assets.

The jurisdictions who became signatories for the two agreements and further information can be found here: [Digital Platforms MCAA](#) and the [Mandatory Disclosure Rules MCAA](#).

OECD Publishes Updated Mutual Agreement Procedure Statistics

The OECD has made available the updated 2021 [Mutual Agreement Procedure Statistics](#) concerning 127 jurisdictions, covering almost all MAP cases worldwide. The information forms part of the BEPS Action 14 Minimum Standard, Making Dispute Resolution Mechanism More Effective, which contained a commitment by jurisdictions to implement a minimum standard to resolve treaty-related disputes in a timely, effective and efficient manner, and timely and complete reporting of MAP statistics pursuant to an agreed reporting framework.

The OECD summary sets out that the [2021 MAP Statistics](#) show the following trends:

- **Significantly more MAP cases were closed in 2021.** *Approximately 13% more MAP cases were closed in 2021 than in 2020, with both transfer pricing cases (+22%) and other cases (almost +7%) closed being significantly more than in 2020. Competent authorities were able to close more cases in 2021 due to the greater use of virtual meetings, the prioritisation of simpler cases and greater collaboration to solve common issues collectively that could be applied across multiple MAP cases. Further, jurisdictions noted that increases in staff and the experience of these staff are now reflected in their ability to be able to resolve more cases.*
- **Fewer new cases in 2021.** *The number of new MAP cases opened in 2021 decreased (almost -3%) (see [trends since 2016](#)) compared to 2020. This is attributed to a significant decrease in new transfer pricing cases being opened (almost -10.5%), while the number of other cases opened increased (almost +4%) compared to 2020.*
- **Outcomes remain generally positive.** *Around 75% of the MAPs concluded in 2021 fully resolved the issue both for transfer pricing and other cases (similar to 76% for transfer pricing cases and 74% for other cases in 2020). Approximately 2% of MAP cases were closed with no agreement compared to 3% in 2020.*
- **Cases still take a long time.** *On average, MAP cases closed in 2021 took 32 months for transfer pricing cases (35 months in 2020) and approximately 21 months for other cases (18.5 months in 2020). Some jurisdictions experienced delays, especially for more complex cases, and the COVID-19 crisis affected the quality of their communication with some treaty partners.*
- **Competent authorities have continued to adapt.** *MAP continued to be available throughout the pandemic with several actions taken by competent authorities. Jurisdictions noted that, especially towards the end of 2021, there has been an increase in MAP engagement with treaty*

partners. Further, while jurisdictions welcomed the resumption of face-to-face meetings, the continued use of virtual meetings has allowed for opportunities to progress individual cases in between face-to-face meetings. This hybrid approach is a welcome practice that many jurisdictions continue to apply to expedite MAP resolutions and improve the efficiency and effectiveness of their MAP programmes.

ECJ Delivers Judgment in Fiscal State Aid Case *Fiat Finance*

The Grand Chamber of the Court of Justice of the European Union [annulled](#) the General Court judgment in the joined C-885/19 *P | Fiat Chrysler Finance Europe v Commission* and C-898/19 *P | Ireland v Commission*, concerning State aid in a form of preferential taxation allegedly granted by Luxembourg to Fiat Finance.

According to the Court of Justice, the General Court committed an error of law in the application of Article 107(1) TFEU by failing to take account of the requirement arising from the case-law, according to which, in order to determine whether a tax measure has conferred a selective advantage on an undertaking, it is for the Commission to carry out a comparison with the tax system normally applicable in the Member State concerned, following an objective examination of the content, interaction and concrete effects of the rules applicable under the national law of that State. The General Court was wrong to endorse the approach consisting in applying an arm's length principle different from that defined by Luxembourg law, confining itself to identifying the abstract expression of that principle in the objective pursued by the general corporate income tax in Luxembourg and to examining the tax ruling at issue without taking into account the way in which the said principle has actually been incorporated into that law with regard to integrated companies in particular.

By dismissing the Commission's understanding of the benchmark, the Court left Member states with more freedom to choose the reference framework under which they might adopt rules or administrative practices deviating from common

rules without falling foul of the State aid prohibition in primary Union law.

Legal commentators have noted, however, that not all is lost for the Commission's scrutiny of discriminatory and/or preferential taxation in Member states given that in paragraph 122 of the judgment the Court states: *"the parameters laid down by national law are manifestly inconsistent with the objective of non-discriminatory taxation of all resident companies, whether integrated or not, pursued by the national tax system, by systematically leading to an undervaluation of the transfer prices applicable to integrated companies or to certain of them, such as finance companies, as compared to market prices for comparable transactions carried out by non-integrated companies"*.

OECD's Global Forum Progress Report on Tax Transparency

During the plenary meeting of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes, the 2022 Global Forum Annual Report and the [Peer Review of the Automatic Exchange of Financial Account Information 2022](#) were made available. The Peer Review report sets out that of the 99 jurisdictions subject to peer reviews, almost all had now implemented a framework for the exchange of information and had started exchanging information.

Additionally, [Peer Review Reports](#) on the Exchange of Information on Request for the jurisdictions of Barbados, the British Virgin Islands, Iceland, Israel, Kuwait, the Maldives, Morocco, Slovenia, South Africa and Turkey were made available during the meeting. Six jurisdictions were deemed "Largely Compliant", and the British Virgin Islands was rated as "Partially Compliant".

Chair of the Global Forum, Maria Jose Garde, stated of the progress report and peer review reports: *"The Global Forum is working to guarantee that all its members are supported to implement the tax transparency standards, and to use them to fight tax evasion and mobilise domestic resources. No jurisdiction can*

be left behind. This is the idea that has defined the spirit in which our 165 members work together to keep advancing tax transparency, and it shall continue to be the case.”

Further information is available [here](#).

EU Parliament Draft Report on Tax-Related Revelations Published

The European Parliament heard last week the findings of MEP Niels Fuglsang (S&D, DK) who presented in the [draft report](#) of October 2022. The draft paper discusses the "Lessons learnt from the Pandora Papers and other revelations".

Key-findings include a recommendations for EU Member states to introduce cooling-off periods for tax authority officials in order to address the issue of revolving doors between legislators, authorities, multinational companies and global professional services firms in the tax advisory area; as well as full implementation of EU's Whistleblower Directive of 2019, among other issues.

The report, once adopted by the European Parliament in a form of a resolution, shall be directed at the Council of EU and the European Commission.

OECD Publishes Updated Corporate Tax Statistics Report

A new OECD report highlights that BEPS risks remain in the absence of the [two-pillar solution](#) to ensure that large multinational enterprises (MNEs) pay a fair share of tax wherever they operate and earn their profits. The OECD's latest annual [Corporate Tax Statistics](#), covering over 160 countries and jurisdictions, includes new aggregated Country-by-Country Report (CbCR) data on the activities of almost 7,000 MNEs, representing a major boost in tax transparency efforts.

The report highlights that statutory Corporate Income Tax rates have continued

to decrease on over the last two decades, although with considerable variation among jurisdictions remains. The average combined (central and sub-central government) statutory tax rates for all covered jurisdictions was 20.0% in 2022, compared to 28.0% in 2000.

EU Commission 2023 Work Programme Announced

The European Commission published the work programme and [policy priorities](#) for the next year, including a more detailed annex of pending legislative initiatives.

Following on the State of the Union speech of President Ursula von der Leyen, the Commission has now set out in its priorities the BEFIT proposal on reform of EU corporate taxation. According to the Commission, "*the Union needs to further strengthen its own budget. To that end, the Commission will present a proposal for a second basket of new own resources, building on the proposal for a single set of tax rules for doing business in Europe (BEFIT). Together, these measures will ensure more diversified and resilient types of revenue and avoid undue cuts to Union programmes or excessive increases in Member State contributions. We will also carry out a mid-term review of the multi-annual financial framework 2021- 2027. We will also push to create a new European Sovereignty Fund, to ensure that the future of industry is made in Europe.*"

The only item in corporate taxation specifically enlisted for adoption in 2023 (quarter 3) is BEFIT (Business in Europe: framework for income taxation), a legislative proposal including an impact assessment, on basis of Article 115 TFEU, which requires unanimity among Member states.

Annex 3, which considers the priority pending initiatives include Proposal for a Regulation establishing a carbon border adjustment mechanism, as well as Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union. These two files are at present in the hands of Member states at Council level.

The selection of the remitted material has been prepared by:
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