



**BRUSSELS | OCTOBER 2022**

## **EU Commission Publishes BEFIT Call for Evidence**

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The European Commission has published a [call for evidence](#) on establishing a new corporate income taxation framework in Europe (BEFIT), setting out the policy context and the key objectives of the initiative. This consultation follows on the discussions organised by the European Commission with key stakeholders within the Platform for Tax Good Governance, where [CFE presented](#) its preliminary views on the matter.

The European Commission has stated in the public call: "*While the principles of a common tax base and of formulary apportionment already featured in the previous proposals for a common consolidated corporate tax base, BEFIT will reflect the significant changes that occurred, in the meantime, in the economy and the international framework. The new proposal will build on the Inclusive Framework two-pillar approach of the Organisation for Economic Co-operation and Development (OECD) and the G20 since the formula for allocating profits of pillar 1 and the rules developed for pillar 2 will be a source of inspiration for the design of the BEFIT policy framework.*"

In her State of the Union speech, Commission President Ursula von der Leyen said of the new proposal for business taxation reform: "We need an enabling business environment, a workforce with the right skills and access to raw materials our industry needs. Our future competitiveness depends on it. We must remove the obstacles that still hold our small companies back. They must be at the centre of this transformation – because they are the backbone of Europe's

long history of industrial prowess. And they have always put their employees first – even and especially in times of crisis. But inflation and uncertainty are weighing especially hard on them. This is why we will put forward a proposal for a single set of tax rules for doing business in Europe – we call it BEFIT. This will make it easier to do business in our Union. Less red tape means better access to the dynamism of a continental market."

The feedback window is open until 5 January 2023. Comments can be submitted via the Have Your Say portal of the European Union.

## OECD Presents New Crypto-Assets Transparency Framework

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The OECD has published its [Crypto-Asset Reporting Framework](#) ("CARF"), following on from the public consultation process which took place in Spring 2022. CFE at the time issued an [Opinion Statement](#) setting out its reservations and views on the proposed Framework.

The CARF will provide for annual automatic exchange of information with the jurisdictions of residence of taxpayers, in a manner similar to the Common Reporting Standard, targeting digital representation of value relying on secured distributed ledger technology to validate and secure transactions. The CARF will accordingly introduce reporting requirements for entities or individuals providing services effecting exchange transactions in crypto-assets.

OECD Secretary-General Mathias Cormann said of the newly published Framework, *"The Common Reporting Standard has been very successful in the fight against international tax evasion. In 2021, over 100 jurisdictions exchanged information on 111 million financial accounts, covering total assets of EUR 11 trillion. Today's presentation of the new crypto-asset reporting framework and amendments to the Common Reporting Standard will ensure that the tax transparency architecture remains up-to-date and effective."*

The Crypto-Asset Reporting Framework will be presented to the G20 Finance Ministers at their meeting on 12-13 October 2022 for review and discussion, and

work will be progressed on the legal and operational instruments needed to facilitate the exchange of information collected on the basis of the CARF.

## **CFE Publishes Statement on the EU Enablers Initiative**

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CFE Tax Advisers Europe has issued an [Opinion Statement](#) on the public consultation launched by the European Commission on 6 July 2022 on the policy options being considered ‘to improve a regulatory framework for tax intermediaries’, through a legislative proposal to tackle the role of ‘Enablers’ that facilitate tax evasion and aggressive tax planning in the European Union (Securing the Activity Framework of Enablers – SAFE).

CFE Tax Advisers Europe and its Member Organisations have always been supportive of reasonable and proportionate initiatives of the European Union. CFE notes the Commission’s view that despite all of the measures taken by the EU and Member States in this area, tax evasion and aggressive tax planning continue to be a substantial problem in the European Union. However, we are very concerned that this view is based on pre-BEPS project data, which is not reflective of the impact of the very considerable volume of new legislative measures that have been introduced on foot of BEPS. It would seem inappropriate to introduce further measures without first fully evaluating the impact of the measures recently introduced.

CFE strongly recommends that no additional legislative action is taken by the Commission until such analysis has been performed (which we understand will start imminently). In this regard, CFE notes the recent study commissioned by the European Parliament, Permanent Committee on Taxation (FISC), which too notes that the impact of recent EU regulations on tax compliance across the Single Market remains uncertain, given that most intermediary regulations such as DAC 6 have been implemented quite recently.

To move forward in this very important area, CFE would like to draw to the Commission’s attention the CFE paper on ‘Professional Judgment in Tax Planning.’ This paper sets out a framework to help steer all advisers in the

direction of an appropriate balance between the rights and obligations of taxpayers, thereby raising standards in tax advice and reducing incentives for aggressive tax avoidance.

We invite you to read the [Opinion Statement](#) and would welcome any feedback or queries concerning the position paper.

## **UN Committee of Experts on International Cooperation in Tax Matters: 25th Session**

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The UN Committee of Experts on International Cooperation in Tax Matters held their 25th Session from 18 to 21 October in Geneva. At the Session, the topics of taxation and sustainable development goals, taxation of crypto-assets, wealth and solidarity taxes, taxation issues related to the digitalised and globalised economy were discussed, amongst other topics.

Papers summarising the outcomes on the agenda item topics discussed at the 25th Session have now been made available, and can be accessed [here](#).

## **Register Now: Conference "Targeting the "Bad Apples": Enablers of Tax Avoidance"; Zagreb, 2 December 2022**

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CFE's 15th European Conference on Tax Advisers' Professional Affairs will be held in Zagreb, Croatia, on Friday 2 December 2022 from 09:30 am to 15:00 pm, organised in cooperation with the Croatian Chamber of Tax Advisers (HKPS), on the topic of ["Targeting the "Bad Apples" : Enablers of Tax Avoidance – Is it Still a Substantial Problem in Europe?"](#).

The EU Commission has been focused on introducing legislation to improve tax intermediaries' regulatory framework and tackle the role of enablers that facilitate tax evasion and aggressive tax planning in the European Union (Securing the Activity Framework of Enablers – "SAFE"). The Commission as part of this legislative initiative is considering policy options such as an EU register of

enablers and due diligence procedures, enforcing measures via monetary penalties, and preventing intermediaries who fit the criteria from providing further services as a means of deterring aggressive tax planning.

Panelists at the 15th European Conference on Tax Advisers' Professional Affairs will consider the potential effectiveness of the proposed legislation; the definitions used and whether policy options which focus on tackling the role of enablers truly reduce aggressive tax planning within the European Union and properly target the "bad apples" in the tax advisory profession. Panelists will also discuss existing legislative measures in the EU, post-BEPS data, and whether tax evasion and aggressive tax planning continue to be a substantial problem in the EU with the introduction of the plethora of post-BEPS EU anti-avoidance legislation.

Further information and the registration page for the event is available [here](#).

## **Council of the EU Blacklists Anguilla, The Bahamas & Turks and Caicos Islands**

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The Council of the EU has added the jurisdictions of Anguilla, The Bahamas & Turks and Caicos Islands to the so-called "Blacklist", the [List of Non-Cooperative Jurisdictions for Taxation Purposes](#).

Following the Code of Conduct Group meetings on 9, 15 and 20 September 2022 and the High Level Working Party on Tax Questions meeting of 20 September 2022, Anguilla, The Bahamas and Turks and Caicos Islands have been added to the list based on concerns that *"these three jurisdictions, which all have a zero or nominal only rate of corporate income tax, are attracting profits without real economic activity (criterion 2.2 of the EU list). In particular, they failed to adequately address a number of recommendations of the OECD Forum on Harmful Tax Practices (FHTP) in connection to the enforcement of economic substance requirements, something to which they committed earlier this*

year." The state of play in Annex II of the Blacklist also details steps taken by various jurisdictions to undertake reforms in order to comply with tax good governance standards. More detail on this can be found in the Code of Conduct (Business Taxation) [report](#) to the Council of the EU.

In addition the Council recommended that certain states engage with the EU to bring their tax practices in line with EU law and policy, notably:

- In the area of tax transparency: Turkey, Barbados, Botswana, Dominica, Seychelles;
- In the area of fair taxation: Costa Rica, Hong Kong, Malaysia, Qatar, Uruguay;
- On technological - economic zones with preferential taxation: North Macedonia, Jamaica, Jordan, Armenia;
- In the area of preferential tax regimes/ holding companies: Russia.

The following jurisdictions are now on the Blacklist:

- American Samoa
- Anguilla
- The Bahamas
- Fiji
- Guam
- Palau
- Panama
- Samoa
- Trinidad and Tobago
- Turks and Caicos Islands
- US Virgin Islands
- Vanuatu

The Blacklist is reviewed twice per year, and will next be reviewed in February 2023.

## Inclusive Framework on BEPS Release Progress Report for Public Consultation

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To mark the one-year anniversary of the [landmark agreement](#) on the two-pillar solution to reform the international tax rules to address the tax challenges arising from globalisation and digitalisation, the OECD/G20 Inclusive Framework on BEPS have released a [Progress Report of the Administration and Tax Certainty Aspects](#) by way of public consultation document.

The report sets out rules agreed under Pillar 1 for administration of taxing rights under this pillar, including tax-certainty aspects, and builds on the first progress report published in July 2022. These two reports are intended to be read together to provide an overview of the design of the rules and their planned operation. The Inclusive Framework aims to finalise preparations of a new Multilateral Convention for implementation of Pillar One by mid-2023, for entry into force in 2024.

The deadline for interested parties who wish to provide input on the consultation report is Friday 11 November 2022. Comments can be submitted electronically in Word format via e-mail to [tfde@oecd.org](mailto:tfde@oecd.org) and addressed to: Tax Treaties, Transfer Pricing and Financial Transactions Division OECD/CTPA.

## CFE ECJ TaskForce Opinion Statement on the EFTA Court decision in Case E-3/21, PRA Group Europe

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The CFE ECJ Task Force has issued an [Opinion Statement](#) on the EFTA Court decision of 1 June 2022 in Case E-3/21, *PRA Group Europe*, on the discriminatory interaction between the “interest barrier” and group contributions.

At issue in *PRA Group Europe* was the interaction of the Norwegian “interest barrier rule” (“interest limitation rule”), which generally limit the deductibility of

interest payments to affiliated resident and non-resident entities to 30% of EBITDA, and the group contribution rules, which permit tax effective transfers between group members, but are limited to Norwegian entities. As group contributions also increase the EBITDA of the recipient Norwegian entity (and decrease it at the level of the paying Norwegian entity), companies in the Norwegian tax group can achieve interest deductions under the interest barrier rules where profits (“tax EBITDA”) and interest expenses are distributed unevenly between the companies in the group, while a similar opportunity to escape (or lessen the impact of) the interest barrier rules is not available to cross-border groups. The EFTA Court took a combined perspective on the interaction of those rules and found them to constitute an unjustified restriction of the freedom of establishment under Articles 31 and 34 of the EEA Agreement. The EFTA Court’s decision is particularly interesting from an EU law perspective, as the interest barrier rule of Article 4 of the Anti-Tax Avoidance Directive (ATAD) similarly foresees the option for Member States to introduce a domestically-limited “interest barrier group” to permit a calculation of exceeding borrowing costs and the EBITD at the local group level.

The CFE ECJ Task Force welcomes the EFTA Court’s progressive impetus on fundamental freedoms doctrine: PRA Group Europe AS makes it clear that for purposes of identifying a restriction, for establishing comparability and for justification, a combined perspective on the interaction of two sets of rules – here the interest barrier on the one hand and the group contribution regime on the other – is necessary. From that perspective, the interaction of the Norwegian rules on the “interest barrier” and on group contributions leads to unjustified discrimination in cross-border situations.

However, if asked to decide on a similar case, the CJEU might take a different approach. First, the CJEU could take a different perspective on the available grounds of justifications and, e.g., accept the coherence of the tax system as such ground. Second, Article 4 ATAD gives the Member States the option to treat an “interest barrier group” as a single taxpayer and to limit the group perspective to domestic settings. Even if such an option in the ATAD is not viewed as “exhaustive harmonization”, one could wonder if the mere existence of the ATAD

and the value judgments made by the EU legislature therein could lead to a different outcome in the EU (CJEU) vis-à-vis the EEA (EFTA Court).

We invite you to read the statement and remain available for any queries you may have.

## **EU Parliament's FISC: Reform of Corporate Taxation & Lessons Learned from the Pandora Papers**

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The European Parliament's Permanent Subcommittee on Tax Matters, FISC, met on 27 October. At the [meeting](#), MEPs who make up the members of FISC held a public hearing on what is next for reform of corporate taxation, at which MEPs discussed the EU Commission [consultation](#) launched last week on establishing a new corporate income taxation framework in Europe (BEFIT).

Also during the meeting, Rapporteur Niels Fuglsang (S&D) presented the draft paper prepared on the topic of "Lessons learnt from the Pandora Papers and other revelations".

The meeting can be viewed online [here](#).

## **OECD Secretary-General Report to G20 Ministers**

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The OECD Secretary General Mathias Corman in his [report](#) to the G20 finance ministers and central bank governors stated the implementation of the OECD's two-pillar international tax reform package continues to progress and tax transparency efforts deliver new major results. According to the report, the implementation of automatic exchange of information (AEOI) has resulted in 100 jurisdictions exchanging information on 111 million financial accounts in 2021, with a total value of 11 trillion Euros. In addition, the report sets out the progress related to Pillar 1 and 2 as well as the recently agreed international transparency framework on crypto-assets, CARF.

The full report can be accessed [here](#).

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