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OECD & IF Members Postpone Freeze on National DSTs Until End-2024

138 Members of the BEPS Inclusive Framework [postponed the freeze](#) on imposition of national digital services tax (DST) until the end of 2024, which allows more time for an international agreement on reallocation of digital economy taxing rights under Pillar 1 to be reached. Some countries, notably Canada, refused to sign off the agreement. Canada's Deputy Prime Minister Chrystia Freeland said they will implement a national DST from 1 January 2024 and would not wait for a multilateral agreement on Pillar One. *"Two years ago, we agreed to pause the implementation of our own digital services tax (DST) to give time and space for negotiations on Pillar One. But we were clear that Canada would need to move forward with our own DST as of January 1, 2024, if the treaty to implement Pillar One has not come into force,"* the [minister said](#).

Bloomberg [reports](#) that *'Biden's administration secured extension of a worldwide freeze on new digital taxes, putting it on a collision course with Canada after Ottawa refused to endorse the deal'*. The US and President Biden's administration signed on the initial agreement in 2021, however tax treaty changes in the US require a two-thirds majority in the Senate to ratify, where many Congress Republicans oppose reallocation of taxing rights under Pillar 1.

The OECD [Outcome Statement](#) indicates the agreed ban on national digital

services taxes would continue through 2025, assuming sufficient progress has been made by that date towards the entry into force of the MLC under Pillar 1. The OECD Secretary-General said the agreement proved that despite the challenges and compromises along the way, multilateral dialogue works and can deliver results to tackle shared challenges, Mr Corman said.

European Union finance ministers [discussed](#) the latest OECD agreement, and acknowledged that Pillar 1 was "brought forward" and an outcome statement was agreed in view of the forthcoming G20 Finance Ministers and Central Bank Governors Meeting that will take place on 17–18 July 2023.

For its part, the European Commission recently published a Pillar 1 Progress report which welcomes the progress made to date and urged all participants in the process to make a final effort to reach an agreement on the MLC to implement Pillar One. The Commission confirmed in the report it will do its utmost to ensure a timely and consistent implementation of Pillar One at EU level.

OECD Invites Input on Amount B, Pillar 1 (Transfer-Pricing)

Following the agreed [Outcome Statement](#), the OECD is now seeking public comments on [Amount B under Pillar One](#) concerning the application of the arm's length principle to in-country baseline marketing and distribution activities. The [public consultation document](#) released today outlines the design elements of Amount B and is released in order to obtain inputs from stakeholders on the technical aspects of Amount B. Further work will be undertaken on the following aspects:

- Ensuring an appropriate balance between a quantitative and qualitative approach in identifying baseline distribution activities;
- The appropriateness of:
 - the pricing framework, including in light of the final agreement on scope;

- the application of the framework to the wholesale distribution of digital goods;
- country uplifts within geographic markets; and
- the criteria to apply Amount B utilising a local database in certain jurisdictions.

Interested parties are invited to submit their comments by **1 September 2023**. Due to the high volume of anticipated submissions, stakeholders are encouraged to send in their comments in the form of a [questionnaire](#), the OECD has said.

Spanish EU Presidency Focus on EU Strategic Autonomy & Industrial Policy

Spain set out the [key priorities](#) for its six months presidency of the Council of the European Union, placing European industrial policy and EU strategic autonomy at the heart of its agenda for the EU. "The international openness of the last seven decades has been mostly beneficial for the EU and has allowed it to reach levels of economic growth and social welfare that would have been unachievable under protectionism. However, this openness has also facilitated the offshoring of industries in strategic sectors, thus making the EU excessively dependent on third countries in areas such as energy, health, digital technologies and food. The geopolitical, technological and environmental changes currently taking place provide us with the opportunity to reverse this trend and attract new companies and jobs to European soil and reduce our foreign vulnerabilities.", the Spanish presidency stated.

In the area of economic policy and taxation, the Spanish presidency has placed "fighting tax evasion" as a key area related to "promoting social and economic justice". The Presidency will "advocate for the establishment of minimum and common standards on corporate taxation in all Member States and will fight tax evasion by large multinationals, which costs the EU 1.5 GDP points each year – that is, the same as what it spends on housing and environmental protection. We

will also work for a proper revision of the Multiannual Financial Framework 2021-2027 and for the adequate reform of the fiscal rules to overcome austerity, increase transparency and combine the sustainability of public finances with the proper financing of the green and digital transitions."

"We approach this presidency with stamina and determination, with a very pro-European approach that we have shown since we joined the Union in 1986, and with the goal of closing as many files as possible and contributing to a stronger, more prosperous, and also fairer Europe going forward.", Nadia Calviño, Spanish minister for economic affairs and digital transformation said.

EU Commission Refers Luxembourg to Court over ATAD

The European Commission has [decided](#) to refer Luxembourg to the Court of Justice for failing to transpose correctly the Anti-Tax Avoidance Directive (ATAD). Specifically, the Commission notes that Luxembourg continues to maintain derogation for securitisation entities, which are not considered as financial undertakings by ATAD. The Anti-Tax Avoidance Directive provides for a derogation from the measure limiting the deductibility of interest payments from the corporate tax base applicable to financial undertakings. The Directive contains an exhaustive list of entities considered as financial undertakings for this purpose.

In May 2020, the Commission sent a letter of formal notice to Luxembourg, followed by a reasoned opinion on 2 December 2021, requesting them to amend their legislation within two months. As Luxembourg's reply to the Commission's reasoned opinion was not satisfactory, the Commission has now decided to refer Luxembourg to the Court of Justice of the European Union.

CFE Opinion Statement in Case C-83/21 Airbnb Ireland and Airbnb Payments UK

CFE has issued an [Opinion Statement](#) of the CFE ECJ Task Force on the ECJ decision of 22 December 2022 in case C-83/21, *Airbnb Ireland and Airbnb Payments UK* decided following the Opinion of AG Szpunar delivered on 7 July 2022. Inter alia, at issue was the compatibility with the freedom to provide services of the tax obligations imposed by the Italian government on service providers offering their intermediation services regarding real estate located in Italy. The Court found admissible to impose the obligation to collect and report data and to withhold tax on the intermediated payments. However, it held disproportionate to request them the appointment of a tax representative resident in Italy.

This case covered other issues such as: i) whether the tax obligations imposed by the Italian government on service providers would fall within the scope of three directives regulating the provisions of services within the EU, which would require communicating it to the Commission prior to its enactment, and; ii) whether the domestic referring court is bound to phrase the preliminary ruling questions following the wording proposed by the parties in the domestic procedures. Those questions will not be covered in this Opinion Statement, which focuses solely on compatibility with fundamental freedoms and, specifically, with the freedom to provide services.

The Court decision in *Airbnb* clarifies the limits of Member States' action concerning the imposition of tax-related obligations to non-taxpayers and reaffirms the inadmissibility of imposing the appointment of tax representatives. Although provided with a new opportunity, the Court did not further clarify the conditions by which a neutral criterion at face value would amount to factual discrimination (i.e. when it is not "inherently neutral" or can be more easily met by residents). This issue has already been addressed in our previous [Opinion Statement](#) on the *Vodafone* case. *Airbnb* appears to prevent any discussions on the validity of DAC7 in what concerns the reporting obligations. Furthermore, *Airbnb* might facilitate the introduction of withholding tax regimes also with non-resident withholding agents.

Finally, *Airbnb* does not prevent Member States (and the respective regions and municipalities) from imposing reporting and withholding tax obligations on the platforms operating within their territories. In case they effectively decide to do so autonomously, online platforms may be faced with thousands of different tax (procedural) regimes, increasing their compliance costs exponentially and hindering their capacity to offer their services within the internal market effectively. For that reason, the EU Commission could consider a proposal to harmonise the respective regimes through a directive.

We invite you to read the [Opinion Statement](#) and remain available for any queries you may have. We invite you to read the statement and remain available for any queries you may have.

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