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EU Commission Publish 4-Step Plan to Implement Qualified Majority Voting in Taxation Matters

On 15 January, the European Commission published a communication which sets out a 4-step plan as to how decision making on tax matters could be modified to take place by way of qualified majority voting. The Commission proposes that the European Council could utilise the passerelle clauses contained in Article 48(7) and Article 192(2) of the Treaty on European Union to produce initiatives indicating the scope of change in the decision-making procedure, and notify National Parliaments. If not opposed within 6 months, the European Council can then adopt the decision by unanimity, after obtaining the consent of European Parliament.

The Commission in its communication states that unanimity in decision making in tax matters has hampered progress on important tax initiatives, needed to strengthen the Single Market and boost EU competitiveness, and identifies the "cost" of non-action in EU Tax Policy as failure to progress the VAT definitive regime, CCCTB, financial transactions tax and digital services tax proposals. The communication proposes a 4-step process to modify the way the EU exercises its competences in taxation as follows:

Part 1 – Employ QMV for measures that have no impact on Member States' taxing rights, bases or rates, but are critical to combat tax fraud, evasion and avoidance and in facilitating tax compliance in the Single Market.

- Aimed at measures such as administrative cooperation and mutual assistance, legislating BEPS actions and reporting obligations.
- Suggested timeframe of Commission: "decision to be taken swiftly".

Part 2 – Employ QMV for measures of a fiscal nature designed to support other policy goals.

- Aimed at measures that support EU policy goals such as measures concerning climate change, environmental protection, public health or transport policy.
- Suggested timeframe: "decision to be taken swiftly".

Part 3 – Introduce QMV in areas that are largely harmonized but which must evolve and adapt to new circumstances.

- Aimed at measures relating to VAT and excise duties.
- Suggested timeframe for implementation: by 2025.

Part 4 – Introduce QMV for other initiatives in the taxation area necessary for the Single Market and for fair and competitive taxation in Europe.

- Aimed at initiatives/measures such as CCCTB, taxation of the digital economy etc.
- Suggested timeframe: by 2025.

The Commission has called for the European Council, European Parliament and all stakeholders to launch an open debate on QMV in EU tax policy, and has invited leaders to endorse its Roadmap, particularly as concerns the use of the passerelle clause for Step 1 and 2 of its Roadmap, and consider the use of the passerelle clause in Step 3 and Step 4.

Public Country-by-Country Reporting Back on Council Agenda

Ahead of the Council of EU Company Law Working Party group meeting scheduled for 24 January 2019, the Romanian EU Presidency published a presidency compromise text of the revised proposal for public country-by-country reporting (CbCR) in the EU. The proposal does not introduce significant amendments compared to the compromise reached earlier in negotiations.

Considering that no significant action has been taken on the issue since the EU Parliament vote in 2017, the Member States are still assessing the situation. Whilst previous Council Presidencies were taking a “wait and see” approach, the Romanian presidency is keen on re-examining the proposal.

Progress on public CbCR came to a halt when the Council Legal Service issued its Opinion in November 2016. The Opinion concluded that public CbCR was a taxation matter and did not fall within the ambit of the Accounting Directive, contrary to what was found by Commission Legal Services. The Opinion is based on the premise that the purpose of the proposals is the protection of the functioning of the internal market and prevention of tax avoidance rather that the protection of shareholders and the public interest under Article 50 TFEU.

In order for the public CbCR proposals to be characterised a “tax file” by the EU Commission, Member States must unanimously request that the Commission do so, therefore the legal Opinion alone has limited practical consequences without subsequent action. Some Member States still challenge the proposed legal basis of the original proposal, suggesting that it relates to taxation matters therefore falls within the ambit of Article 115 TFEU.

The European Parliament appears to be maintaining its steadfast support and went a step further in its initial opinion. The parliamentary Rapporteurs originally proposed the reduction of the 750 million euro threshold to 40 million and to extend the scope of the publication of the information beyond that relating to EU countries to every country in which they operate. The question of the legal basis was also assessed.

After the vote on the report in a joint committee meeting on 12 June 2017, the amendments were adopted by Plenary on 4 July 2017 (including a compromise on the 750 million euro threshold) and the file was referred back for inter-institutional negotiations.

3. UK's HMRC Launches "Profit Diversion Compliance Facility"

The UK's revenue authority, HM Revenue and Customs, has launched an online facility enabling MNEs to make disclosures and remedy compliance in relation to any arrangements they have in place which may not be in line with the OECD Transfer Pricing Guidelines and UK Diverted Profits Tax ("DPT") rules. The facility also provides MNEs with the opportunity to submit proposals concerning payment of any tax, interest or penalties that may be due in relation to arrangements that are not compliant with UK DPT.

Significantly, HMRC will treat disclosures made through the Facility as 'unprompted' for the purposes of calculating penalties, and will not charge penalties for inaccuracies in returns or for failures to notify of any diverted profits if reasonable care has been taken or a reasonable excuse can be demonstrated, provided that registration takes places before 31 December 2019 and the requirements of the facility are met. Additionally, if a MNE complies with the terms of the facility, HMRC will not publish details of the entity as would otherwise occur.

Gary Ashford, Vice-President of CFE Tax Advisers Europe, discussed the facility in a recent interview, noting that *"The timing of this new facility is particularly interesting, at the same time as many jurisdictions, including the UK Crown Dependencies and Overseas Territories, introduce legislation on substance requirements to address the concerns of the international community, including the EU, in relation to their code of conduct on business taxation."*

4. Faroe Islands & Greenland Join OECD BEPS Inclusive Framework

The Faroe Islands and Greenland have now joined the OECD's BEPS Inclusive Framework. Members of the Inclusive Framework have the opportunity to work together on an equal footing with other OECD and G20 countries on implementing the BEPS package consistently and on developing further standards to address remaining BEPS issues. There are now 127 jurisdictions that are participating in the project.

In addition, Belize has now become the 86th jurisdiction to sign the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Monaco also deposited its instrument of ratification concerning 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.

CFE 2018 Technical & Policy Publications

2018 was a significant year for tax policy, both within Europe and across the world, and CFE's technical output concerning the many important tax policy developments was a crucial means of exchanging information and contributing to the discussion concerning the development of tax law in Europe.

The CFE 2018 Technical & Policy Publications is a collection of all CFE Tax Advisers Europe position papers released in 2018. We invite you to read the publications and remain at your disposal for any questions you may have.

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