



**BRUSSELS | 24 OCTOBER 2022**

## **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, will meet this week on 27 October. At the [meeting](#), MEPs who make up the members of FISC will hold a public hearing on what is next for reform of corporate taxation, at which MEPs will likely discuss 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) will present the draft paper prepared on the topic of "Lessons learnt from the Pandora Papers and other revelations".

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

## **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.

## **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 last week, 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](#).

## **2022 Global Forum Plenary Meeting: 9 - 11 November**

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The plenary meeting of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes will be held from 9 - 11 November in Seville, Spain. The 2022 Global Forum Annual Report and Peer Review of the Automatic Exchange of Financial Account Information 2022 will be presented during the Plenary, as well as Peer Review Reports on the Exchange of Information on Request for the jurisdictions of Barbados, British Virgin Islands, Iceland, Israel, Kuwait, Maldives, Morocco, Slovenia, South Africa and Turkey.

In addition, the sessions from the first day of the Plenary on 9 November, on addressing the challenges of tax co-operation and exchange of information will

be available to view by the public, via [live broadcast](#) and on [OECD TV](#).

## **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](#).

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