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OECD Meeting on Pillar One: Stakeholders' Input on the OECD Secretariat Proposals

A public consultation took place at the OECD in Paris on 21 November, with 450 stakeholders in attendance, 300 of which submitted written responses to the OECD Secretariat proposal on the unified approach. Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration confirmed that the work at government representative level is ongoing, with the Secretariat proposal serving as a blueprint for further negotiations. The next Inclusive Framework meeting is scheduled for January 2020.

Representatives from the OECD, the BEPS Inclusive Framework, academics, tax practitioners and advisers and representatives of businesses addressed substantive issues arising from the Unified Approach proposal, in particular scope and nexus, computation of Amount A, elimination of double taxation in relation to Amount A, fixed remunerations under Amount B as well as dispute prevention and resolution. There was an emerging consensus that the new challenges arising from digitalisation were conducive to a shift toward formulary apportionment, however, discussions could not agree on the precise principles underpinning such a shift. In addition, there was some criticism from the floor on the lack of clear principles justifying the departure from the arm's length principle; that the absence of a coherent rationale might potentially undermine the goal to achieve fairness with the new profit allocation rules.

Generally, participants sought clarity on definitions such as residual profits, business within scope of the proposal, the viability of the proposed coexistence of the two systems (existing tax rules under Amount B and C vs. new nexus and taxing rights under Amount A), as well as guarantees for robust and effective dispute prevention and resolution mechanisms. Representatives of business models which traditionally do not derive meaningful value from user interaction ('consumer-facing') sought to be carved out of the new rules. On the administration-side, opportunities for simplification of the rules were also discussed, with suggestions for a central coordinating jurisdiction or one-stop-shop to audit Amount A, such that the parent entity would file a return on behalf of the group entities, informing other jurisdictions of about the portion they would be entitled under Amount A, with a possibility for a single jurisdiction to collect and remit the tax due for the other jurisdictions involved.

CFE issued an Opinion Statement responding to the consultation highlighting a number of key elements that should be embedded as part of this process, calling for more clarity and early consensus at political level as to the outcome of the process. CFE's statement emphasises the significance of departing from well-established principles of international tax law towards a more complex international tax system which partly introduces formulary apportionment.

2. Code of Conduct Group Report Recommends Updating EU Tax Blacklist

The EU's Code of Conduct Group (Business Taxation) have concluded in a Note to Council setting out its evaluation of tax good governance standards that, as a result of Jordan joining the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inclusive Framework on BEPS on 29 October, it has now fulfilled the tax good governance criteria set out by the EU and as a result Jordan should be removed from Sections 1.2 and 3.1 of Annex II of the Blacklist. The General Secretariat of the Council of the EU recommends in a note to the EU Member states that these changes be approved at the next ECOFIN Council in November.

Eight jurisdictions presently remain on the EU blacklist: American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

3. Commission Publishes Draft Explanatory Notes on VAT Quick Fixes

The European Commission has published draft Explanatory Notes on EU VAT changes in respect of call-off stock arrangements, chain transactions and the exemption for intra-Community supplies of goods ("2020 Quick Fixes"), which the Commission prepared for input and discussion at the upcoming VAT Expert Group meeting.

The explanatory notes set out guidance on Commission's view as to interpretation of Council Directive (EU) No 2018/1910 amending Council Directive 2006/112/EC and Council Implementing Regulation (EU) No 2018/1912 amending Implementing Regulation (EU) No 282/2011 concerning the VAT Quick Fixes. The explanatory notes will not be legally binding on the Member States or the European Commission.

The "Quick Fixes", aimed at rectifying a number of issues in relation to the day-to-day running of the EU VAT system, were adopted by the EU Council in December, and will apply from 1 January 2020. The fixes were designed to address specific issues with EU VAT rules, pending the introduction of a definitive EU VAT Regime, concerning: call-off stock arrangements – simplification and harmonisation of rules regarding call-off stock arrangements, where a vendor transfers stock to a warehouse at the disposal of a known acquirer in another Member State; VAT identification numbers – by the introduction of an identification number for a customer as an additional condition for VAT exemption for intra-EU supplies of goods; chain transactions – simplification and harmonisation of rules regarding chain transactions; and proof of intra-EU supply – introduction of a common framework of criteria of documentary evidence required to claim a VAT exemption for intra-EU supplies.

Czech Government Approves Digital Tax Plan

4.

The Czech Republic's government has approved plans to introduce a digital services tax to apply to businesses making revenue from Czech users' data, in particular targeting advertising, social media platforms, online marketplaces and user data sales.

The proposed tax would impose a 7% digital services tax on domestic digital sales for companies with a global turnover above 750 million Euros, and a national turnover above 100 million Czech koruna.

The proposal will now be considered by the Czech Parliament.

5.

Final Reminder: CFE Conference on Anti-Money Laundering, Paris - 29 November 2019

There are still a limited number of places remaining for the CFE Tax Advisers Europe 12th European Conference on Tax Advisers' Professional Affairs, entitled "Making Anti-Money Laundering More Effective For Tax Advisers". This year, the conference will take place at the Maison de l'Artisanat in Paris, France, on Friday 29 November 2019 from 9:15 am to 4 pm, and has been jointly organised by CFE and the Institut des Avocats Conseils Fiscaux (IACF).

In light of all the recent developments on the anti-money laundering front, representatives of the OECD Tax & Crime Division were invited to speak about the international approach against money laundering concerning tax evasion and tax crimes, alongside speakers from academia, practice and other international organisations. Tax practitioners from the Netherlands, France and the United Kingdom will shed light on the effect of anti-money laundering directives in practice. Speakers will examine the perceived risks posed by the tax profession in facilitating money laundering based on the EU Commission's Supranational Risk Assessments and will also discuss compliance with the new and existing EU Anti-Money Laundering Directives, as well as the efforts taken to address money laundering in the broader international context.

Register now to secure your place at the conference.

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