



**BRUSSELS | 26 OCTOBER 2020**

## **CJEU Decision in Cross-Border Exchange of Information Cases**

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The Court of Justice of the EU has handed down its decision in [Cases C-245/19 and C-246/19](#), concerning cross border exchange of information in tax matters between tax authorities.

The [Resumé](#) sets out that as concerns the right of either a taxpayer or third party in cross-border requests for exchange of information to contest the request, that the Court held *“The right to an effective remedy guaranteed by the Charter of Fundamental Rights requires that persons who hold information that is requested by the national administration, in the context of a cooperation procedure between Member States, must be able to bring a direct action against such a request. Nevertheless, Member States may deny the taxpayer subject to the tax investigation and the third parties concerned by the information in question the right to bring such a direct action, provided that there are other remedies enabling them to obtain an incidental review of that request.”*

The Court further held that in determining the scope of a request for information, "any information that is not manifestly lacking any realistic importance" is foreseeably relevant and that *“a request for information may relate to categories of information rather than specific information where such categories are defined by criteria establishing their ‘foreseeable relevance’ ”*.

## EU Commission Commences Infringement Proceedings for Golden Passport Schemes

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The European Commission has commenced [infringement proceedings](#) against Malta and Cyprus in relation to investor citizenship “golden passport” schemes, on the basis that granting citizenship for a pre-determined amount of investment or payment without a genuine link with the Member State is not compatible with the principle of sincere cooperation in Article 4(3) of the TFEU.

This follows from reviews of these schemes by the European Parliament, and the resolution adopted in June 2020 calling on Member States to phase out citizenship or residency by investment schemes. It was also established as a priority by President Von der Leyen in her State of the Union Address in September.

Malta and Cyprus have been issued with letters of formal notice, to which they have two months to respond. The Commission, if not satisfied with the responses, can thereafter issue a Reasoned Opinion. In addition, Bulgaria has been furnished with a request for further information concerning an investor citizenship scheme being operated.

## OECD Digital Tax Economic Impact Assessment Webinar

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The OECD held a [webinar](#) on 20 October 2020 examining the economic analysis and impact assessment of the recently published blueprints for [Pillar 1](#) (review of profit allocation and nexus rules to reflect digital business models) and [Pillar 2](#) (global anti-base erosion rules for a minimum effective taxation rate), concerning proposals for taxation of the digital economy being negotiated by the Inclusive Framework on BEPS.

Though the OECD during the seminar conceded that the COVID-19 crisis could reduce the revenue expected to be collected under the economic analysis, the analysis shows that Pillar 1 and 2 measures could increase global corporate income tax by 50 – 80 million USD per year, with around 100 million USD expected to be reallocated to market jurisdictions, representing an increase in tax revenue for all economies, apart from those where “investment hubs” are located.

The current Pillar 2 blueprint would reduce profit shifting incentives, and generate revenue gains across all jurisdictions. In addition, the webinar highlighted that although the measures would involve increased compliance costs for MNEs, the cost would be far higher without a global solution, given the numerous unilateral digital tax measures being implemented across the globe. A [blogpost](#) was also published further summarising the analysis.

## Save the Date: CFE Professional Affairs Virtual Conference on Taxpayers Rights - 30 November

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Save the date for the 13th European Webinar Conference on Tax Advisers' Professional Affairs, to be held virtually on Monday, 30 November 2020 from 3:30pm to 5pm CET, on the topic of “Taxpayer Rights and Legal Certainty in the Digital Era”.

The virtual conference will welcome tax experts and academics, including Dr Philip Baker QC, Prof. Nataša Žunić Kovačević and Paul Kraan, as well as Albert Raedler from the European Commission, who is leading the current Commission project on taxpayers rights. The panel will examine European and global developments in the protection of taxpayers' rights and the impact and implications of technology on taxpayers' rights. The conference will also review the recently published IBFD [2019 Yearbook on Taxpayers' Rights](#), the most recent compilation of information by the Observatory on the Protection of Taxpayers' Rights.

Register [here](#) to secure your place for the webinar.

## OECD Tax Dispute Resolution Peer Review Reports Published

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In the framework of the work undertaken under BEPS Action 14 and the improvement of the tax dispute resolution mechanisms, the OECD has [issued](#) the third batch of Stage 2 peer review reports, assessing the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project and recommendations contained in the Stage 1 peer review reports.

Reports were published for the Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain, and in general revealed positive developments in all jurisdictions, to varying degrees. All countries had signed the BEPS Action 15 MLI, with it having been ratified by 5 of the jurisdictions, and all countries had increased personnel or made positive changes for the competent authority dealing with MAP cases, with five of the jurisdictions decreasing MAP case time duration.

BEPS Action 14 seeks to improve the tax-dispute resolution mechanisms via the Inclusive Framework peer-review process, which looks into the compliance with the minimum standard reviewed and monitored by peer countries.

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