BRUSSELS I 28 JANUARY 2019

1. EU Endorses Europe-wide Protection of Whistleblowers

On Friday 25 January the EU Council, at the Committee of Permanent Representatives (COREPER) to the EU, reached agreement at ambassadors' level on its position on the Commission proposal establishing EU-wide protection of whistleblowers, including those reporting on issues related to tax matters. Negotiations with EU Parliament will now commence, with the aim of reaching agreement before the end of the current EU parliamentary term. The Council is also required to formally adopt the directive.

Progress related to whistleblowers' protection at EU level came close to a halt when the opinion of the Legal Service of the Council of the EU was presented to a Working Group on 17 December. The opinion divided Member States, considering the recommendation to split the original "horizontal- protection" single EU directive into separate pieces of legislation. As such, the opinion would necessitate that tax whistleblowers are protected under separate legislation (requiring unanimity), which is difficult to obtain in any event.

A game changer, reportedly, was the COREPER meeting of 16 January (Brussels jargon for the Member States' permanent representatives - ambassadors or their deputies accredited to the EU), when the majority of Member States decided to overrule the advice. Member States agreed that protection to whistleblowers, including those that report on tax evasion, should be covered under one piece of legislation, as originally proposed by the European Commission.

The text agreed by COREPER has introduced various provisions, including a requirement to follow internal reporting processes save for in circumstances where public reporting is required on the basis of imminent danger. The agreed text also introduces an article setting out certain criteria that need to be satisfied in order to benefit from protection in the instance of public reporting. Feedback obligations for authorities and companies have also been included. However, COREPER did not make substantial revisions to the range of persons to be protected by the Directive.

In July, the CFE issued an Opinion Statement on the EU Commission proposal, which set out CFE's support for proposals that seek to establish horizontal rules for protection of whistleblowers, as well as their role in advancing public policy interests, specifically reporting tax fraud, corruption, abusive and illegal practices. The Opinion Statement highlighted certain aspects of the Commission proposal in relation to taxation that in our members' view merit further technical refinement, in particular the broad wording of

Article 1(1)d. The Council's position retains the wide scope of application, as proposed by Commission.

BIAC Sets Out Businesses Views on Taxation of the Digital Economy

BIAC, the voice of business at the OECD representing over 7 million companies, has set out policy recommendations on the reform principles related to the taxation of the digital economy. BIAC endorses the OECD Interim Report of March 2018 and welcomes the process within the OECD Inclusive Framework, as the most appropriate platform to address the tax challenges of the Digital Economy.

Commission Publishes January Infringement Package

The European Commission has published its January infringement package setting out the legal action being pursued against various Member States by the Commission for non-compliance with obligations under EU law.

In State aid matters, the Commission has issued a letter of non-compliance to Greece for not having implemented the ruling of the Court of the Sixth Chamber in Case C-481/16, *European Commission v Hellenic Republic*, concerning its failure to recover aid granted to LARCO in the amount of 135.8 million Euros, held to be illegal and incompatible by the Commission in its decision dated 27 March 2014.

The Commission referred to the Court of Justice Germany for failure to align national legislation with EU rules in relation to VAT refunds, Italy for failure to align national legislation to provide citizens who live abroad with a reduced tax rate on purchases of property in Italy and to the UK for extending the VAT derogation concerning transactions carried out on certain commodities markets.

The Commission also sent letters of formal notice to Hungary for failing to align its minimum tax rates on cigarettes with EU standards, and for infringing tax rules by introducing administrative formality for border crossings through requiring companies provide VAT information on business-owned transport using public roads. Poland was sent a formal notice requesting it bring into line VAT rules concerning goods facilitated by consignees, to Romania to align customs debt legislation and to Spain concerning unduly restrictive conditions being imposed on tax deferrals for divisions of companies that are contrary to the Merger Directive. In addition, infringement proceedings were commenced against Portugal for non-alignment of registration tax on used cars.

The Commission discontinued infringement cases opened in 2018 against the Czech Republic, Poland and Greece for failing to implement into national legislation Council Directive 2016/2258 concerning the mandatory automatic exchange of information in the field of taxation as regards Member States' access to anti-money laundering information, following those countries having now successfully implemented the Directive.

4.

OECD Tax Talks

The OECD will be hosting a Tax Talk webcast on 29 January 2019 at 15:00 to 16:00 CET. The webcast will cover the topics of tax and digitalisation, BEPS implementation and the new OECD Corporate Tax Statistics. Those interested in participating in the webcast can register here.

5.

ICAEW Publishes Digitalisation of Tax – International Perspectives

The ICAEW, the Institute of Chartered Accountants in England and Wales, a Member of CFE Tax Advisers Europe, has published a 2019 edition of its Digitalisation of Tax – International Perspectives publication. The publication is intended as a guide to trends in digital tax administration, and to that end reviews the current practices in 12 countries, including Australia, Brazil, Canada, China, the Czech Republic, Estonia, Italy, Nigeria, Singapore, the UK and the USA.