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OECD Secretary-General Report to G20: Key Developments in International Tax Reform

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The latest OECD Tax Report to the G20 details progress in the international tax landscape. The report outlines developments in the Two-Pillar Solution, aimed at addressing tax challenges linked to the digitalisation of the economy. The Subject to Tax Rule (STTR), a component of Pillar Two has been reinforced by a new multilateral treaty signed by 19 jurisdictions, offering developing countries a mechanism to tax outbound payments that receive low or no taxation abroad. Additionally, with 45 countries already implementing global minimum tax legislation under the Global Anti-Base Erosion (GloBE) Rules, the OECD projects a substantial increase in the coverage of multinational enterprises (MNEs) by 2025.

The OECD reports that efforts continue to finalise the Multilateral Convention (MLC) for Amount A under Pillar One, and that the MLC text has received widespread support, though remaining political discussions also aim to refine consensus on Amount B.

The Base Erosion and Profit Shifting (BEPS) Project's minimum standards also remain a core focus for the OECD, and it reports over 54,000 exchanges of information on tax rulings since the BEPS Action Plan's inception. Moreover, tax treaties have been fortified by the BEPS Multilateral Instrument (MLI), now covering 1,950 bilateral treaties. Country-by-Country reporting continues to expand, with 120 jurisdictions mandating reporting requirements, enhancing transparency of MNE operations.

In addition to the Two-Pillar Solution, the OECD emphasises enhanced tax transparency in the report, particularly on real estate transactions and beneficial ownership, aligning with the Global Forum's capacity-building programs. In 2023, data on 134 million financial accounts was exchanged automatically among

jurisdictions, totalling nearly EUR 12 trillion in assets. The introduction of the Crypto-Asset Reporting Framework (CARF) is also detailed in the report, reflecting global efforts to standardise tax transparency for crypto-assets, with commitments to further support developing jurisdictions.

EU Tax Priorities Insights: Commissioner-Designate Hoekstra's Q&A, FISC Exchange With Vestager & EU Council Conclusions

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In a written Q&A exchange with the EU Parliament held in preparation for his confirmation hearing before the European Parliament on 7 November, Wopke Hoekstra, the European Commissioner-Designate for Climate, Net-Zero, and Clean Growth, outlined strategic tax policies to bolster the EU's climate goals while supporting economic competitiveness and social equity.

Hoekstra emphasised the importance of tax policy as a key driver in the EU's twin transition to a green and digitally advanced economy. He proposed a streamlined corporate tax framework aimed at reducing compliance costs for small- and medium-sized enterprises (SMEs) and plans to address "tax obstacles" that currently hinder cross-border business operations within the EU. Hoekstra reaffirmed his commitment to simplifying EU tax directives, including Anti-Tax Avoidance and Administrative Cooperation rules, with an ambitious goal of reducing administrative reporting burdens by 25% overall and by 35% specifically for SMEs.

Hoekstra proposed decisive steps to prevent tax evasion, tax avoidance, and the use of shell companies within the EU and abroad, stressing the importance of implementing global tax reforms in line with OECD standards. In the context of climate goals, he is prioritising environmental tax measures to harmonise energy taxation across Member States. This would support the EU's 2040 and 2050 emissions targets by incentivising sustainable energy consumption and discouraging carbon-intensive production. Plans to revisit the Energy Taxation Directive (ETD) were highlighted, aiming to modernise tax rates for energy products based on emissions profiles, in line with the EU's "polluter pays" principle. Additionally, Hoekstra proposed removing longstanding tax exemptions for aviation and maritime fuels, a move intended to foster the transition to sustainable fuels in these sectors.

Hoekstra stressed his commitment to international tax transparency and compliance with the OECD's Pillar II agreement on minimum corporate taxation. He advocated for a coordinated EU response to enforce minimum tax rates on multinationals and prevent harmful tax competition within the EU, acknowledging

that the special legislative procedure requiring unanimity among Member States remains a challenge. He also addressed the urgency of addressing the tax implications of digital assets and cryptocurrencies, proposing collaborative EU action to ensure these assets do not facilitate tax evasion.

During an exchange of views meeting with the EU Parliament's Permanent Tax Subcommittee (FISC) on 16 October, Executive Vice-President Margrethe Vestager outlined key developments in EU tax policy. She emphasised the EU's commitment to fair taxation through high-profile cases like the *Apple* tax ruling and state aid investigations. Vestager also addressed the growing challenges in taxing the digital economy, stressing the need for policy reform to ensure fairness and sustainability in a rapidly changing global landscape.

One of the main challenges discussed was how to define and capture digital value, especially in the context of AI and automation, which are reshaping traditional taxation models. Looking ahead, Vestager proposed future policy directions, including implementing OECD's Pillar One framework, creating a common EU corporate tax base, and ensuring fair taxation for small and medium-sized enterprises (SMEs). She stressed the importance of simplifying the tax system to increase transparency and curtail aggressive tax planning, all while maintaining the European social contract.

Vestager emphasised that the status quo is unsustainable and that reforms must continue, that the EU needs to adapt its tax policies to remain competitive globally while ensuring that all economic actors contribute fairly to maintaining public services and social welfare.

In conclusions adopted following its meeting on 17 October 2024, the European Council also reiterated the urgency of enhancing the EU’s competitiveness, highlighting its central role in securing economic resilience and industrial renewal.

As part of its strategic agenda, the Council emphasised that EU institutions, Member States, and stakeholders must work collectively to address structural challenges, particularly those outlined in reports by Enrico Letta and Mario Draghi on European competitiveness. The conclusions underline: the critical importance of maintaining a globally competitive economy, with the Single Market at its core; ensuring that the EU remains competitive internally and externally; and, the necessity for a harmonised fiscal environment to support competitiveness, ensure a level playing field, foster fair taxation and prevent tax avoidance.

Tax policy will play a pivotal role in this context, especially in addressing disparities across Member States that could lead to uneven economic growth. The Council’s discussion on financial strategies to support long-term competitiveness hinted at

the integration of taxation within broader EU economic policies, as well as promoting effective tax measures to secure sustainable investment in green and digital technologies. These shifts in fiscal policy are aimed to attract investment while also addressing global tax challenges such as evasion and profit-shifting, which could impact the Union's competitiveness on a global scale.

UN Tax Committee Addresses Digitalisation, Double Taxation and Capacity Building at 29th Session

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The 29th Session of the UN Committee of Experts on International Cooperation in Tax Matters took place from October 15-18, 2024, in Geneva. The Session's agenda focused on key topics related to tax transparency, digitalisation, and sustainable development. The Committee continued discussions on tax-related issues emerging from the global digital economy, with particular emphasis on promoting fairness and equity in international tax systems. The event attracted participation from experts and representatives of tax authorities, international organisations, and civil society.

One of the session's highlights was the progress made on the UN Model Double Taxation Convention and its guidelines for tax dispute resolution through Mutual Agreement Procedures (MAP). The experts explored enhancing cooperation between jurisdictions to reduce instances of double taxation, which can create obstacles to trade and investment. Additionally, efforts to prevent base erosion and profit shifting (BEPS) were a significant focus, with ongoing discussions aimed at curbing aggressive tax avoidance practices that undermine the global tax base.

The Committee also addressed capacity-building initiatives, especially for developing countries, to strengthen tax administration and improve domestic resource mobilisation. Participants emphasised the need for greater technical support and sharing of best practices to ensure that developing nations can participate effectively in international tax cooperation frameworks. These discussions are critical as countries seek to align tax policies with broader goals of sustainable development and economic fairness.

ECOFIN: Council of the EU Updates List of Non-Cooperative Jurisdictions for Tax Purposes

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Economic and Finance Ministers updated the list of non-cooperative tax jurisdictions at an EU Council ECOFIN meeting held in October. The EU Council

removed Antigua and Barbuda from the so-called Blacklist, leaving 11 jurisdictions on the list, namely: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands, and Vanuatu.

Antigua and Barbuda was added to the list in October 2023 after an unfavourable OECD Global Forum review on exchange of information. However, recent legal reforms led to a supplementary review. Notably, Fiji and Palau have made progress toward compliance with EU listing criteria. Meanwhile, the Council approved its regular "state of play" document (Annex II), which tracks cooperation with jurisdictions working toward tax reform. Armenia and Malaysia have fulfilled commitments and will be removed from the state of play, while Vietnam has been granted additional time to meet country-by-country reporting standards, with reassessment set for February 2025.

In response to the removal of Antigua and Barbuda, Pascquale Tridico (GUE, IT), new Chair of the FISC Subcommittee on Tax Matters expressed concern over the decision in a press release, stating that delisting should occur only after tax reforms are fully implemented, not merely based on commitments. He also criticised past removals of jurisdictions like the Cayman Islands and Bermuda for accepting minimal compliance measures. Tridico called for enhanced listing criteria, a stronger role for the European Parliament to ensure transparency, and efforts to address tax havens within the EU itself.

CFE Opinion Statement in Apple State Aid Case - *Commission v Ireland*, C-465/20

CFE Tax Advisers Europe's ECJ TaskForce has issued an Opinion Statement on the decision in the *Commission v Ireland (“Apple”)* case, C-465/20, in which the Court of Justice of the EU (Grand Chamber) delivered its decision on 10 September 2024.

The *Apple* case concerns the question of whether tax rulings issued by the Irish tax administration to Irish incorporated but non-resident companies that form part of the Apple Group are compatible with EU rules on State aid and, in particular, if the General Court’s holding that the Commission had failed to prove to the required standard that such aid had indeed been granted, was legally correct.

The Court set aside the General Court judgment of 15 July 2020, which had annulled the European Commission findings of State aid. The CJEU’s Grand Chamber found that the General Court made errors in its understanding of the Commission’s decision that led it to wrongly conclude that the Commission had failed to

demonstrate that the tax rulings led to favourable tax treatment of the non-resident entities in comparison to non-integrated standalone companies and other companies dealing at arm's length. In reaching this result, the Grand Chamber judgment follows the Opinion of AG Pitruzzella delivered on 9 November 2023. Rather than referring the case back to the General Court for reconsideration, as the AG had recommended, the Court decided to render a final judgment on the validity of the Commission decision, reinstating it in full.

The CFE Opinion Statement seeks to explain and analyse the CJEU's reasoning both with respect to the annulment of the General Court's judgment and its final ruling on the granting of illegal state aid to the Apple Group. CFE Tax Advisers Europe welcomes the CJEU's decision to give a final judgment in the case to prevent a prolonged uncertainty over the outcome. It wonders, however, how the judgment fits with recent case law of the Court, which had shown more deference to Member States' interpretation of their law in assessing derogations from 'normal taxation' in specific cases.

The CFE wonders whether the judgment's outcome, insofar as it sits in tension to holdings in its earlier judgments in *Fiat* and *Engie*, and the later judgment in *UK CFC* might be considered as specific to the circumstances of the procedure. In particular, this relates to the fact that the CJEU did not review the findings of the General Court it had rejected in that judgment but, in the absence of a cross-appeal by Ireland or Apple, had considered *res judicata* in this decision. In light of these considerations, the CFE expects the Court will clarify the status of its judgment in this case and its previous case law in future decisions.

The CFE ECJ Task Force is formed by CFE Tax Advisers Europe and its members are Georg Kofler (Chair of this Task Force and Professor at the Institute for Austrian and International Tax Law of WU Wien), Alfredo Garcia Prats (Professor at the University of Valencia), Werner Haslehner (Professor at the University of Luxembourg), Aleksandar Ivanovski (Director of Tax Policy at CFE Tax Advisers Europe, *ad hoc* member in 2024), Eric Kemmeren (Professor of International Taxation and International Tax Law at the Fiscal Institute Tilburg of Tilburg University), Michael Lang (Professor at the Institute for Austrian and International Tax Law of WU Wien), João Nogueira (Professor at Universidade Católica Portuguesa and Deputy Academic Chairman at IBFD), Christiana HJI Panayi (Professor at Queen Mary University of London), Stella Raventós-Calvo (Vice-President of CFE Tax Advisers Europe), Isabelle Richelle (Co-Chair of the Tax Institute - HEC - University of Liège, Brussels Bar Elegis), and Alexander Rust (Professor at the Institute for Austrian and International Tax Law of WU Wien).

We invite you to read the Opinion Statement and remain available for any queries you may have.

EU Commission Publishes DAC9 Proposal for a Central Filing Mechanism for Pillar 2 Reporting

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The European Commission has published a "DAC9" proposal to amend the Directive on administrative cooperation in the field of taxation (Directive 2011/16/EU) and harmonise the reporting process in the EU for the OECD/G20 Base Erosion and Profit Shifting (BEPS) Pillar Two Directive's minimum effective tax rate of 15% on MNEs across their operational jurisdictions.

The DAC9 proposal would allow MNEs to file one standardised "Top-up Tax Information Return" and introduce a mechanism for automatic information exchange between EU Member States, as envisaged in Article 44 of the Pillar Two Directive. The proposal's central filing mechanism allows an MNE's ultimate parent entity (UPE) or a designated filing entity to submit a single, consolidated Top-up Tax Information Return for the entire group, instead of requiring each constituent entity within the EU to file individually.

To facilitate the filing, two main conditions must be met: the jurisdiction of the UPE (or designated entity) must have arrangements for information exchange with all relevant EU countries, and the central report must cover all necessary jurisdictional data points. The proposal introduces a structured "dissemination approach" to ensure that tax authorities across Member States receive the appropriate segments of the Top-up Tax Information Return.

To streamline these exchanges, a standardised electronic form for the Top-up Tax Information Return will be created, along with an automated computer system (within the existing EU Common Communication Network) to manage data sharing. The form aligns with the OECD's GloBE Information Return and is supported by an EU-developed IT infrastructure funded by the Fiscalis program, which will also finance any updates to ensure interoperability and compliance with evolving international standards.

The proposal will now be considered by the EU Council.

OECD Releases Online Manual on Effective Mutual Agreement Procedures (MEMAP)

The OECD has made the Manual on Effective Mutual Agreement Procedures (MEMAP) available online as part of its ongoing efforts to enhance international tax dispute resolution. Originally published in 2007, MEMAP is a central component of a larger initiative to refine existing tax dispute procedures and develop supplementary dispute resolution mechanisms. It serves as a guide to raise awareness about the Mutual Agreement Procedure (MAP) and provides tax administrations and taxpayers with a comprehensive overview of how the process should function. MEMAP also outlines best practices for navigating the MAP process without imposing binding rules on member countries.

MEMAP complements existing OECD guidance, including the OECD Model Tax Convention and Transfer Pricing Guidelines, ensuring coherence with established international tax frameworks. It does not modify or expand the legal rights and obligations found in tax treaties but offers valuable insights into handling MAP effectively. Tax professionals and tax administrations are encouraged to consider MEMAP's best practices when addressing tax disputes, although its recommendations are flexible and may not always apply universally. The online availability of MEMAP provides an accessible resource for those involved in cross-border tax issues.

EU Opens Infringement Procedure Against Spain, Cyprus, Poland and Portugal for Non-Compliance With Pillar Two Directive

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The European Commission has referred Spain, Cyprus, Poland, and Portugal to the Court of Justice of the European Union for failing to implement the Council Directive (EU) 2022/2523, the Pillar 2 Directive. This directive establishes a minimum global tax rate of 15% for multinational enterprises and large domestic groups with an annual turnover of at least €750 million, aiming to prevent tax base erosion and profit shifting.

While EU member states were required to transpose the Pillar 2 Directive into national law by 31 December 2023, these four countries have yet to notify the European Commission of their national measures. Despite ongoing efforts, Spain, Cyprus, Poland, and Portugal missed the deadline, prompting the Commission to escalate the matter by taking formal legal action.

The Commission emphasises that the swift implementation of Pillar 2 is crucial for ensuring a level playing field across the EU and globally, by curbing harmful tax competition and ensuring that large corporations are subject to a fair minimum tax rates. Companies operating in these countries should closely monitor

developments, as delays in implementing the Pillar 2 rules could affect corporate tax planning and compliance strategies.

EU to Introduce Standardised Reporting for CbCR

The European Commission has proposed a implementing regulation to standardise reporting under the country-by country reporting requirements from the 2013 Directive 2013/34/EU, which mandates that companies exceeding certain revenue thresholds must disclose country-by-country tax information. The proposed regulation introduces a common template and electronic format, and companies within the scope would need to comply with these requirements starting from financial years in 2025. Reports will require the use of XHTML with Inline XBRL markup, ensuring both human-readable and machine-readable formats, facilitating digital accessibility and regulatory compliance.

The regulation specifies that EU-regulated undertakings must structure tax reports according to an established taxonomy, ensuring that data elements are uniformly presented. For instance, companies must mark up data on tax expenses, revenues, and related information using a predefined core taxonomy to meet the automated reporting criteria. Notably, the regulation exempts some non-EU parent companies from using the specific EU template but requires their EU subsidiaries to publish tax information on behalf of the entire group if needed.

OECD Publications on Tax Arbitrage, Crypto-Assets & CBS Reporting

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The OECD published three publications in October surrounding international tax reporting and tax arbitrage trends, namely: revised guidelines for the Common Reporting Standard (CRS) and the Crypto-Asset Reporting Framework (CARF), as well as a working paper exploring tax arbitrage incentives across OECD countries.

Updated User Guide for CRS XML Schema

The updated user guide XML schema for the Common Reporting Standard (CRS), is pivotal for facilitating the automatic exchange of CRS-related financial information between tax administrations worldwide. However, beyond cross-border exchanges, this XML schema can also be used by Reporting Financial Institutions for domestic reporting purposes, subject to local law provisions.

The updated guide has enhanced guidance on data structuring and transmission to improve compliance with CRS requirements and includes more flexibility for

jurisdictions to adopt the schema for domestic reporting, allowing for greater standardisation in financial reporting.

Crypto-Asset Reporting Framework (CARF) User Guide

The OECD as also released a user guide for the Crypto-Asset Reporting Framework (CARF) XML schema, approved in 2023. This framework is aimed at facilitating the automatic exchange of information on crypto-assets between tax administrations globally. Similar to CRS, the XML schema for CARF can also be employed by Reporting Crypto-Asset Service Providers for domestic reporting, where local regulations allow.

The user guide includes guidelines for crypto-asset data exchange, helping authorities track crypto-asset transactions and tax obligations more effectively and information for the use of XML schema by crypto-asset service providers for reporting to domestic tax authorities.

OECD Report on Tax Arbitrage Incentives

A recent OECD paper has delved into the issue of tax arbitrage behaviours, particularly in the context of unincorporated businesses and closely held incorporated businesses. The study highlights how tax system features in many OECD countries incentivise tax minimisation strategies, leading to increased incorporation of businesses as a tax planning tool.

The working paper concludes that tax incentives to incorporate and earn capital income through corporations have grown over the past two decades, contributing to a rise in incorporated businesses across OECD countries. A combination of factors— including corporate, dividend, capital gains, and inheritance tax features— encourages business owners to retain earnings within corporations rather than distributing them. The study suggests that tax planning strategies have become more sophisticated, with tax systems themselves sometimes driving these behaviours.

The selection of the remitted material has been prepared by: Aleksandar Ivanovski & Brodie McIntosh