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2024 Tax Policy Report

CFE's Tax Policy Report provides a detailed analysis of tax policy developments at both EU and international level of interest to European tax advisers. It also includes an overview of significant CJEU case-law European Commission decisions handed down in that year.

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A Year in Tax: 2024

Insights and Reflections from the Director of Tax Policy

At the end of 2024, tax policy stands at a critical juncture, both within the European Union and on the global stage, as governments and institutions seek to balance competitiveness, sustainability, and fairness in a rapidly evolving economic landscape.

Key developments included elections in the EU, the UK and the US, among other jurisdictions, with disruptive impact on policy. The Second Von der Leyen Cabinet was approved by the European Parliament in November, splitting the key economic and fiscal policy responsibilities among a number of Commissioners. The Commissioner responsible for taxation, Wopke Hoekstra promised to focus on positioning taxation as a cornerstone of the EU's strategy for sustainable growth. His plans include simplifying tax compliance for SMEs, reforming energy taxation to accelerate the green transition, and fostering an integrated fiscal environment that supports competitiveness and innovation across Member States. Tax policy will also play a pivotal role in addressing structural disparities within the EU, ensuring that fiscal measures promote balanced growth and avoid economic fragmentation. Hoekstra also promised to the European Parliament to revisit the EU draft directives on Digital Services Tax should discussions on Pillar 1 and taxation of the digital economy fail at global level.

2024 saw a "closure" for the European Commission tax rulings saga and the State Aid cases. With a mixed record for the Commission, the Court of Justice decided to fully uphold the European Commission 2016 decision on the Apple case, giving Ireland a windfall of 13 billion EUR in taxes. On basis of the guidance from the Court, the Commission also decided to conclude the investigations into Fiat, Amazon and Starbucks in favour of the Member states and companies involved.

Merely two days before the end of her mandate, on 28 November, Margrethe Vestager said: "*The EU Courts have confirmed in the recent Apple judgment that the Commission was right in challenging certain aggressive tax ruling practices. In other judgments, they have also set the benchmark to assess tax planning practices under EU State aid rules. Today, taking into account all of the EU Courts findings, we have concluded that Fiat, Amazon, and Starbucks did not receive a selective advantage over other companies*".

A key global development in 2024 has been the United Nations General Assembly's adoption of the resolution "Promotion of inclusive and effective international tax cooperation at the United Nations," introduced by Nigeria on behalf of the African Group of Nations, to create a UN Framework Convention on International Tax Cooperation. The resolution faced pushback from the EU and other countries over concerns about decision-making processes, representational inclusiveness, and its overlap with existing tax governance frameworks like the OECD. EU representatives emphasised the importance of consensus for sustainable international agreements, warning that unresolved issues in the terms of reference could jeopardise enforcement of future taxation agreements and engagement in future discussions.

2024 has seen continued efforts to modernise and strengthen tax systems at the EU level. The implementation of global minimum taxation under the OECD/G20 Inclusive Framework has advanced, becoming hard law in the European Union, with the EU Directive of Minimum Taxation. The implementation of this directive poses significant challenges for practitioners and tax administrations alike, in particular in view of the evolving Model Rules on GloBE at OECD level.

Additionally, the EU's VAT in the Digital Age package has now been agreed upon by the Member States, which aims to improve compliance and reduce fraud, while green taxation reforms, including the revised Energy Taxation Directive, support the Union's climate goals. The European Council has also underscored the importance of harmonising fiscal policies to ensure a level playing field and to promote long-term competitiveness in green and digital technologies.

The strategic agenda for the next Commission reflects the balance of its leadership in global tax reforms with protecting existing frameworks and advocating for inclusive, consensus-driven solutions. The next mandate will surely focus on integration of taxation into broader economic strategies to address disparities, foster fairness, and attract investment, as highlighted in the Draghi Report on competitiveness.

Aleksandar Ivanovski

Director of Tax Policy

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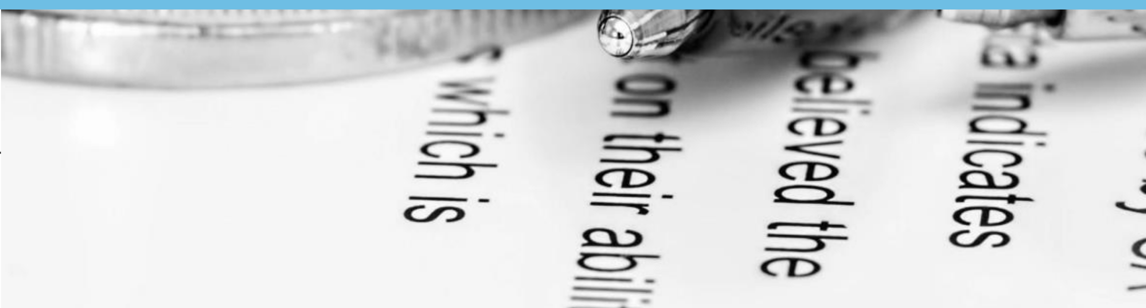
UN International Tax Framework

01



UN International Tax Framework : Terms of Reference for Framework

In early 2024, the United Nations launched a dedicated website to provide updates on the progress of its Framework Convention on International Tax Cooperation. This initiative follows the adoption of General Assembly Resolution 78/230 in December 2023, which mandates the development of a draft framework convention by August 2024.

Intergovernmental sessions to advance this work took place in New York during April-May and July-August 2024. The 28th Session of the UN Committee of Experts on International Cooperation in Tax Matters took place in March 2024, focusing on key tax challenges such as digital economy taxation, environmental and health taxes, wealth taxation, and transfer pricing as part of its 2021-2025 work plan.

A "Zero-Draft" of the framework's terms of reference was published in June 2024, outlining commitments to equitable taxation, addressing environmental challenges, transparency, and dispute prevention. Negotiations are planned to continue through 2025 and 2026, supported by resources provided by the UN Secretary-General.

In July 2024, during an ECOFIN meeting, the EU Council emphasised the importance of consensus-driven decision-making and alignment with existing international tax standards to prevent mismatches and duplication of efforts. The session also highlighted the EU's concern for transparency and inclusivity in the negotiation process. The United Nations General Assembly's Second Committee (Economic and Financial) approved four draft resolutions and two draft decisions at its 79th Session on 27 November, 2024, including a significant resolution on international tax cooperation.

The resolution, titled "Promotion of inclusive and effective international tax cooperation at the United Nations" (document A/C.2/79/L.8/Rev.1), was introduced by Nigeria on behalf of the African Group. It seeks to establish terms of reference for a UN Framework Convention on International Tax Cooperation. The resolution passed with 125 votes in favour, 9 against, and 46 abstentions, reflecting mixed support. Concerns were raised, particularly by the United States and the European Union, over the lack of emphasis on consensus-based decision-making and potential overlaps with existing tax governance frameworks.

Key points of contention were the resolution's operative paragraphs 2 and 5, which were retained despite votes called by the European Union and others seeking revisions. EU representatives emphasised the importance of consensus for sustainable international agreements, while African Group representatives argued that the terms reflected months of negotiations and balanced perspectives from diverse Member States. The EU raised particular issues regarding decision-making processes, representation inclusiveness, and the adoption of the Terms of Reference without full agreement, emphasising the need for consensus-based decision-making.

Abstentions and opposition from countries like Japan, Australia, New Zealand, and the UK highlighted concerns about the framework's implications for existing international tax standards and its exclusion of non-state jurisdictions from key discussions. The EU warned that failure to address these concerns in the upcoming negotiations could lead to its disengagement from the process. The Bahamas, representing interests of financial service-dependent economies, supported the resolution, describing it as a transformative opportunity for developing nations to influence the global tax agenda.

Despite this, developing nations, particularly those represented by the African Group, argued the framework offers a transformative opportunity to ensure their interests are reflected in global tax policies. If successful, the treaty could be adopted by 2027 and subsequently opened for ratification by UN member states.

OECD Pillar 1 & 2 Update

02

OECD Pillar 1 & 2 Update

The recent US Presidential and Senate elections have cast significant doubt on the ambitious international tax reform initiatives under Pillar 1 and Pillar 2. With the Republican Party, which has historically resisted ceding taxing rights over US-based multinationals, now controlling both Congress and the Presidency, the likelihood of ratifying a multilateral agreement appears slim. This development has broad implications for global tax policy and international trade.

Stalemate on Pillar 1 Negotiations

Pillar 1 was designed to modernise international tax rules by reallocating taxing rights to market jurisdictions for large multinational enterprises (MNEs), particularly those in digital services, regardless of physical presence. This reform comprises two components: Amount A, which allows market jurisdictions to tax a share of MNE profits based on revenue generation, and Amount B, which simplifies transfer pricing for low-capacity jurisdictions.

While technical negotiations on Pillar 1 have progressed, political consensus remains elusive. The Multilateral Convention (MLC) for implementing Amount A was nearing finalisation, with countries like France and Brazil preparing to host formal adoption ceremonies. However, US opposition, now reinforced by Republican control, threatens to derail these efforts. Without ratification by key players, Pillar 1 may fail to reach the global adoption required for implementation.

In December 2024, the Netherlands published a decree on the OECD's Pillar 1 Amount B framework, detailing its application to Dutch taxpayers. While the rules for simplified transfer pricing will not apply to domestic transactions, the Netherlands committed to recognising Amount B outcomes from covered jurisdictions under specific conditions. The decree also clarified its application to permanent establishments, addressing gaps in OECD guidance. Although the decree aims to provide certainty for cross-border operations, businesses must carefully review global transfer pricing policies as the Netherlands prepares for implementation in January 2025.

Re-emergence of EU's Digital Services Tax (DST) Directive?

As progress on Pillar 1 stalls, many countries are reinstating or expanding unilateral Digital Services Taxes (DSTs). France has increased its DST rates, while Italy has lowered revenue thresholds for applicability. These measures allow countries to tax revenue generated by foreign digital service providers within their borders, but they also reignite tensions with the United States.

The European Union, which paused its own Digital Services Tax in anticipation of OECD-led reforms, may reconsider its stance, adding more complexity to the landscape. In fact, at his confirmation hearing at the European Parliament, EU's Tax Commissioner Hoekstra also promised to revisit the EU draft directives on Digital Services Tax should discussions on Pillar 1 and taxation of the digital economy fail at global level.

Historically, the US has viewed DSTs as discriminatory, targeting its digital giants such as Amazon, Google, and Meta. During the Trump and Biden administrations, these taxes prompted retaliatory tariffs, which were temporarily suspended during OECD negotiations. Now that the standstill agreement on DSTs has expired, trade conflicts are likely to resurface, adding economic strain to already fragile international relationships.

Global Trade and Economic Risks

The failure to achieve consensus on Pillar 1 risks a proliferation of unilateral DSTs, which could cascade into retaliatory trade measures. This potential trade war would undermine economic stability and further fragment international tax frameworks.

The OECD's reforms aimed to reallocate $17–32 billion in annual tax revenue to market jurisdictions, offering significant benefits to countries where digital services generate substantial profits. Without a multilateral agreement, these opportunities may be lost, and countries may instead pursue piecemeal solutions that increase compliance costs for businesses and foster inefficiencies in the global tax system.

Uncertain Future for Pillar 2

Pillar 2 and its global minimum tax rate of 15% faces significant challenges, particularly due to US resistance. A Republican-controlled government under Trump is unlikely to adopt the legislation necessary to implement the rules domestically, further complicating efforts for global alignment. This lack of progress in the US contrasts sharply with developments in the European Union, where the European Commission has taken proactive steps to enforce compliance among its Member States.

The Commission has initiated infringement proceedings against nine Member States, including Spain, Cyprus, Poland, and Portugal, for failing to transpose the Pillar 2 Directive into national law by the 31 December 2023 deadline. These measures are part of the EU's efforts to ensure a level playing field by curbing harmful tax competition and enforcing a global minimum tax rate. Despite this, the delays highlight the challenges of achieving uniform implementation even within the EU.

Moreover, the transposition of Pillar 2 into EU law underscores the divergence between the EU and its major trading partners, such as the US, on global tax reform. While EU Member States are compelled to adopt the rules under the Directive, multinational enterprises operating in jurisdictions that implement Pillar 2 will still be subject to its provisions, regardless of US inaction. This discrepancy could result in complex compliance landscapes for businesses and varying competitive advantages across jurisdictions.

As the OECD pushes for a unified approach, the uneven implementation of Pillar 2 underscores the difficulties in achieving global consensus on tax reform. For multinational corporations, the fragmented adoption of these rules introduces further uncertainty in navigating compliance and strategic planning across different regions.

Business Implications

For multinational corporations, the breakdown of negotiations and the revival of unilateral DSTs create significant challenges. Companies now face increased compliance complexity as they navigate varying national tax frameworks. The uncertainty surrounding future tax obligations makes long-term business planning more difficult, particularly for digital-first enterprises that are most affected by these policies.

Conclusion

The US political shift following the recent elections has placed OECD-led tax reforms in jeopardy, reigniting unilateral tax measures and increasing the risk of trade disputes. While the OECD continues to push for consensus, the timeline for meaningful reform is slipping, leaving the global tax landscape fragmented and uncertain. Without renewed commitment to multilateral cooperation, both governments and businesses will face growing challenges in adapting to an increasingly fractured tax regime.

EU Direct Tax Policy Developments

03

KEY LEGISLATIVE DEVELOPMENTS IN 2024

FASTER Proposal Agreed by Council & Parliament

On 19 June 2023, the European Commission published the proposal for a Council Directive on Faster and Safer Relief of Excess Withholding Taxes, the "FASTER Proposal". The FASTER initiative seeks to streamline withholding tax processes, making relief systems more efficient and reducing the risk of fraud. It introduces digital tax residence certificates and standardised reporting obligations for financial intermediaries.

On 14 May 2024, the EU Council reached political agreement on the framework. The directive emphasises relief-at-source systems and quick refund mechanisms, with stringent compliance requirements to prevent abuse. FASTER also aims to harmonise procedures across Member States by 2030.

The European Parliament reviewed and provided its opinion on the original text of the Proposal on February 28, 2024. However, due to amendments made by the Council during negotiations, the European Parliament needed to be consulted again on the revised text, and on European Parliament approved on 14 November the Council-agreed text of the FASTER Directive (Faster and Safer Relief of Excess Withholding Taxes – Directive 2023/0187). The Directive's approval by the European Parliament paved the way for it to be resubmitted to the Council of the European Union for final approval.

The Proposal was formally adopted by the Council on 10 December and will now be published in the EU's Official Journal and will thereafter come into effect.

Member States must transpose the directive by 31 December 2028, with implementation set for 1 January 2030. This will require financial institutions and investors to adapt to new due diligence and reporting processes, ensuring compliance with the revised withholding tax systems.

Key Dates:

14 May 2024: Political agreement reached by the Council of the EU.
31 December 2028: Deadline for Member States to implement the proposal.
1 January 2030: Proposal becomes applicable.

Transfer Pricing & BEFIT Proposals

On 12 September 2023, the European Commission published two legislative proposals, for a Council Directive on "Business in Europe: Framework for Income Taxation (BEFIT)" and a proposed Council Directive on Transfer Pricing.

These corporate tax reform proposals aim to reduce the administrative burden for taxpayers and authorities with a harmonised corporate tax base and simplified Transfer-Pricing administration, according to the European Commission.

The BEFIT proposal introduces a unified tax framework for EU-based businesses, focusing on simplification and harmonisation. It builds on the OECD's Pillar Two framework. The EU Transfer Pricing Directive aims to standardise the application of the Arm's Length Principle across Member States, ensuring consistency and reducing compliance burdens.

In 2024, Member States expressed concerns about subsidiarity and potential conflicts with national tax rules. However, supportive opinions from EU bodies underscored the proposal's potential to reduce compliance burdens. A compromise proposal to revive a non-binding Joint Transfer Pricing Forum was discussed, with further negotiations scheduled for 2025.

CFE Tax Advisers Europe published two Opinion Statements in early 2024 concerning the proposed directives, setting out detailed remarks concerning the BEFIT proposal, its legal basis, the timing, the implementation timeline and costs and feasibility of compliance which we believe need to be taken into account before this directive could be subject to a vote for adoption.

CFE in its statement concerning the Transfer Pricing set out that it supports simplification, but it is not in favour of parallel standards as proposed by Directive. CFE believes the Directive would make legal relationships intra-EU versus non-EU more complicated. Furthermore, it would be extremely challenging to codify the ambulatory, dynamic and evolving OECD Guidelines in EU legislation that would need to be implemented in the different national legislations of the Member States.

Negotiations will continue in 2025.

Key Dates:

12 September 2023: Proposals presented by the European Commission.
April 2024: Non-binding opinions issued by EU bodies.
2025: Further discussions expected.

Pillar Two Implementation

Council Directive (EU) 2022/2523, the EU's adoption of OECD's Pillar Two rules, establishes a global minimum tax framework through the Income Inclusion Rule (IIR) and Undertaxed Profits Rule (UTPR). It 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.

The Commission has stressed 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 rate. It accordingly brought infringement actions against Members States who had not transposed the Directive in a timely manner. In 2024, Member States worked on incorporating administrative guidance into national laws, addressing transitional challenges, and ensuring smooth implementation.

Key Dates:

31 December 2023: IIR and Qualified Domestic Minimum Top-up Tax became effective.
31 December 2024: UTPR comes into effect.
2025: Continued focus on adapting OECD guidance.

DAC9 Proposal – Harmonisation of the Pillar 2 Reporting Process

On 28 October 2024, the EU Commission put forward a new directive proposal, called the "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.

Key Dates:

31 December 2025: Deadline for Member States to implement DAC9.
30 June 2026: First filing deadline for Top-up Tax Information Returns (TTIRs).

Unshell Directive

In late 2021, the European Commission adopted a proposal for a directive on the misuse of shell entities, or unshell legislation in the EU-bubble jargon. The directive aims to enable more tools for tax authorities to detect the misuse of shell entities, by requiring reporting (relevant disclosure) in tax returns and consequently denying benefits of tax treaties and EU tax law. The Unshell directive combats tax avoidance by targeting the misuse of shell entities. It proposes denying tax benefits to entities lacking sufficient economic substance.

In 2024, discussions advanced with revisions to simplify reporting obligations using a hallmark-based self-assessment system. However, disagreements persisted at EU Council level discussions on the proposal, particularly over enforcement and technical complexity.

Key Dates:

22 December 2021: Initial proposal introduced.
24 June 2024: ECOFIN acknowledged progress but highlighted the need for further technical work.
2025: Decision on adoption expected with significantly reduced scope compared to the original text.

Public Country-by-Country (CbCR) Reporting

Public CbCR reporting enhances tax transparency by requiring large multinational enterprises to disclose tax payments on a jurisdictional basis. This initiative aims to foster accountability and public trust. In 2024, clarifications on reporting obligations were made, particularly regarding the treatment of non-cooperative jurisdictions and aggregated data for other regions.

In late 2024, the European Commission 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.

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

Key Dates:

22 June 2024: Directive applies to financial years starting from this date.
31 December 2026: First Public CbC Report filings due (for FY 2025).

Revision of the Energy Taxation Directive (ETD)

The ETD revision aims to reform energy taxation by basing tax rates on energy content and environmental impact. The directive also broadens its taxable base to align with the EU's climate goals.

In 2024, EU negotiations progressed under the leadership of Commissioner Hoekstra. Member States discussed balancing competitiveness with environmental objectives, emphasising clean energy incentives without harming industrial growth.

Key Dates:

2024: Negotiations progressed under EU Commissioner Hoekstra.
2025: Continued technical discussions expected.

Carbon Border Adjustment Mechanism (CBAM)

The Carbon Border Adjustment Mechanism is designed to prevent carbon leakage by ensuring a fair competitive landscape for EU manufacturers compared to those in regions with less stringent climate policies. CBAM applies to imports such as cement, fertilisers, and aluminium, requiring reporting of emissions and eventually imposing costs on embedded emissions.

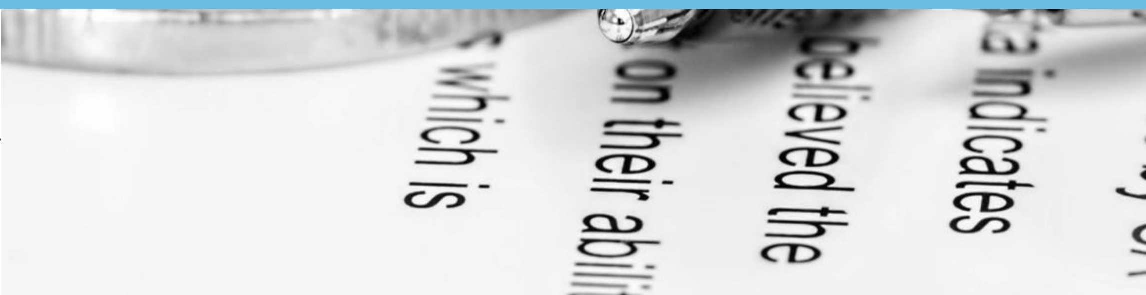
In 2024, the EU finalised preparations for CBAM's full implementation. Importers must become authorised declarants starting 1 January 2025, to handle the administrative requirements for the mandatory submission of CBAM certificates, which will begin on 1 January 2026. Each certificate corresponds to the amount of CO2 emissions associated with imported goods and will be priced in line with the EU Emissions Trading System.

Key Dates:

1 October 2023: Start of the transitional reporting phase.
1 January 2025: Deadline to apply for authorised CBAM declarant status.
1 January 2026: Full implementation requiring CBAM certificates for imports.

EU Indirect Tax Policy Developments

04



KEY LEGISLATIVE DEVELOPMENTS IN 2024

VAT in the Digital Age (ViDA) Package Agreed

The VAT in the Digital Age (ViDA) package represents a transformative reform of the EU VAT system, adapting it to the realities of the digital economy. Following nearly two years of negotiations, the ECOFIN Council of Ministers reached a political agreement in 2024 to finalise measures aimed at reducing VAT fraud, simplifying compliance, and enhancing the EU's competitiveness.

Hungarian Finance Minister Mihály Varga described the agreement as a "cornerstone for the digital transition," highlighting its role in modernising VAT systems, easing burdens on businesses (especially SMEs), and fostering fair competition in the evolving platform economy.

Key Components of ViDA

1. **Digital VAT Reporting and E-Invoicing:**
    - The current periodic reporting system will be replaced by real-time digital reporting via standardised e-invoices for cross-border B2B transactions.
    - From January 1, 2030, businesses must issue e-invoices that automatically transmit transaction data to national tax authorities.
    - National authorities will share this data in real time through a unified EU IT system, significantly enhancing tools to combat VAT fraud.
    - By January 2035, Member States must ensure interoperability between national systems and the EU framework to support the seamless exchange of information.
    - E-Invoicing Standards:
        - All e-invoices must comply with the EU standard EN 16931.
        - Member States can implement domestic e-invoicing systems without prior EU approval from early 2025.

2. **VAT Rules for the Platform Economy:**
    - Digital platforms facilitating short-term accommodation rentals and passenger transport services will adopt a "deemed supplier" model. Platforms will be responsible for collecting and remitting VAT when their service providers are not VAT-registered.
    - This reform addresses VAT gaps in the platform economy and ensures fair competition with traditional businesses.
    - Member States will have flexibility to exempt SMEs and refine the definition of short-term rentals for tax purposes.
    - Clear definitions will delineate the roles of providers, users, and platforms, reducing risks of double taxation or non-taxation.

3. **Expanded One-Stop Shop (OSS) for VAT:**
    - The OSS will be extended to cover movements of own stock across EU borders, reducing the need for businesses to register in multiple Member States.
    - Businesses can use the OSS to declare VAT for local sales, such as goods stored in warehouses for later sale to consumers.
    - A mandatory reverse charge mechanism will apply where a supplier is not established in the VAT-collecting Member State.
    - The existing call-off stock simplification will be withdrawn, with businesses required to report stock movements via the OSS.

4. **Additional Changes:**
    - Adjustments to the €10,000 B2C distance selling threshold and updates to tax point rules will take effect in January 2027 to refine the 2021 e-commerce package.
    - The introduction of real-time reporting will replace EC Sales Lists, further simplifying VAT compliance processes.

Impacts and Objectives:

- Combat VAT Fraud: Real-time reporting and data sharing through a unified EU system will provide tax authorities with robust tools to detect and prevent fraud.
- Simplify Compliance: Streamlined reporting processes, expanded OSS coverage, and new platform rules reduce administrative burdens for businesses.
- Enhance Competitiveness: The reforms support the EU's digital transition, fostering fair competition, encouraging investment, and creating a more integrated and fraud-resistant VAT framework.

Key Dates:

- **1 July 2028:** Implementation of single VAT registration, reverse-charge mechanisms, and platform economy reforms begins (voluntary).
- **1 January 2030:** Mandatory e-invoicing for cross-border B2B transactions and platform economy reforms.
- **January 2035:** Full interoperability of Member States' digital VAT systems with the EU framework.

Explanatory Notes for the EU SME VAT Special Scheme 2024

The European Commission published detailed Explanatory Notes to support small and medium enterprises (SMEs) in navigating the updated EU VAT regime, which will take effect on **1 January 2025**.

These notes offer practical guidance on the VAT exemption scheme introduced under **Council Directive (EU) 2020/285**, providing clarity on the benefits and compliance requirements for eligible SMEs. While non-binding, they serve as a resource to simplify SMEs' transition to the new rules.

Key Features of the Updated SME VAT Scheme:

1. Eligibility and VAT Exemption:

- SMEs with annual turnovers up to **€100,000 across all Member States** can opt for VAT exemption on their goods and services.
- Exempt businesses are not required to register for VAT or submit periodic reports but lose the ability to deduct input VAT.

2. Dual-Layer Structure (Domestic and Cross-Border):

- SMEs can apply the VAT exemption in their home Member State or across Member States where VAT is due.
- The harmonised approach eliminates distortions and ensures equal treatment for both domestic and foreign SMEs.

3. Simplified Registration and Reporting:

- Eligible SMEs can register once in their home Member State and obtain a unique "EX" identification number valid across all participating countries.
- A **single quarterly report** replaces the need for multiple VAT returns, reducing administrative burdens.

4. Harmonised Thresholds:

- The scheme sets a maximum domestic turnover limit of **€85,000**, with flexibility for Member States to set sector-specific thresholds.
- This ensures consistency while accommodating local economic variations.

5. Transitional Provisions and Interaction with Other Mechanisms:

- Guidance covers the transition for SMEs currently under the domestic scheme, re-entry rules for businesses leaving the scheme, and scenarios involving VAT systems like the **One-Stop-Shop (OSS)**.
- SMEs are provided with practical steps for maintaining compliance while benefiting from the new framework.

Benefits for SMEs:

- **Reduced Compliance Costs**: The exemption and simplified reporting processes lower administrative overheads for small businesses.
- **Enhanced Market Access**: The cross-border application ensures fairness and facilitates trade across the EU.
- **Streamlined Administration**: A unified registration and reporting system significantly reduces the complexity of VAT obligations.

Next Steps for SMEs:

- SMEs are encouraged to thoroughly review the Explanatory Notes to understand the updated rules, benefits, and potential trade-offs (e.g., loss of input VAT deduction).
- Businesses must assess their eligibility and prepare for the transition before the 1 **January 2025** implementation date.

EU Blacklist & Code of Conduct Update

05

EU Updates ‘Blacklist’ of Non-Cooperative Jurisdictions

The Council of the EU maintains a list of non-cooperative jurisdictions for tax purposes, aiming to combat tax evasion and promote good governance worldwide. This list is periodically reviewed and updated based on each jurisdiction’s adherence to tax transparency, fair taxation, and the implementation of international standards to prevent tax base erosion and profit shifting.

The EU Council revised its “Blacklist” of non-cooperative tax jurisdictions twice in 2024, during two key meetings. At the ECOFIN meeting on 8 October, Antigua and Barbuda was removed from the blacklist, leaving 11 jurisdictions: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands, and Vanuatu. Antigua and Barbuda had been added in October 2023 following an unfavourable OECD review but was delisted after recent legal reforms. Fiji and Palau were noted for progress toward compliance. Armenia and Malaysia were removed from Annex II (“State of Play”) for meeting commitments, while Vietnam received an extension to meet reporting standards by February 2025.

Earlier, at the 20 February meeting, the Bahamas, Belize, Seychelles, and Turks and Caicos Islands were removed from the blacklist after updates from the OECD regarding economic substance and information exchange requirements. The Council also removed Albania, Aruba, Botswana, Dominica, Hong Kong, and Israel from Annex II for fulfilling commitments or improving Global Forum ratings.

The EU assesses jurisdictions based on:

Tax Transparency: Commitment to international standards on the automatic exchange of information and information upon request.
Fair Taxation: Ensuring that tax regimes do not facilitate offshore structures or arrangements aimed at attracting profits without real economic activity.
Implementation of Anti-BEPS Measures: Adopting measures to prevent base erosion and profit shifting, in line with OECD guidelines.

Jurisdictions that do not meet these criteria and fail to engage in meaningful dialogue with the EU are included in the list.

Implications for Listed Jurisdictions:

Inclusion in the EU list can lead to both reputational damage and specific defensive measures by EU member states, such as:

- Increased monitoring and audits.
- Withholding taxes.
- Limiting the deductibility of costs.
- Special documentation requirements.

These measures aim to protect Member States’ tax bases and encourage listed jurisdictions to improve their tax governance standards.

During a recent European Parliament hearing, María José Garde, Chair of the Code of Conduct Group on Business Taxation, defended the EU's blacklist criteria amid criticism from Members of the European Parliament (MEPs). Critics questioned why certain jurisdictions labelled as tax havens, such as the British Virgin Islands, were not included on the list. Garde clarified that the blacklist assesses cooperation with international tax standards, not whether a jurisdiction qualifies as a "tax haven." She highlighted that the criteria for listing jurisdictions are objective and cannot be altered without agreement from European finance ministers at ECOFIN.

Other MEPs, including Niels Fuglsang and Chair Pasquale Tridico, argued that the current process lacks rigor and transparency, allowing jurisdictions to avoid meaningful reform. Garde noted that discussions to enhance the criteria, particularly focusing on transparency of beneficial ownership, are ongoing but provided no timeline for changes. She stressed that the Code of Conduct is a political commitment, not legally binding, and that the goal is to encourage jurisdictions to meet international tax standards while maintaining a level playing field.

FISC Subcommittee Chair Pascquale Tridico also criticised the October delistings in a press release responding to the decision, advocating for stricter criteria, transparency, and a stronger European Parliament role in addressing issues with tax havens, including, according to Tridico, tax havens within the EU.

The list is updated biannually, with the next revision scheduled for February 2025.

FISC : Key Activities of the EU Parliament's Permanent Tax Subcommittee

The European Parliament's Permanent Tax Subcommittee (FISC) has outlined its key priorities for its new mandate, focusing on creating a fairer and more progressive taxation system while addressing tax evasion and the challenges posed by an increasingly digital and global economy.

Under the new leadership of Chair Pasquale Tridico, supported by four Vice-Chairs from various political groups, FISC aims to focus on a couple of key topics, including addressing the disproportionate tax burdens placed on small and medium-sized enterprises (SMEs) compared to multinational corporations. The subcommittee has highlighted the need to further address tax avoidance, which could cost $4.8 trillion globally over the next decade, by enhancing financial transparency, leveraging digital tools, and promoting balanced taxation systems that consider the transformative impact of artificial intelligence (AI) on economies and labour markets.

In October 2024, FISC held a hearing on tax simplification and transparency, where experts identified the complexities of the European tax environment as a significant barrier to entrepreneurship and foreign investment, with SMEs disproportionately affected. Recommendations from the panel included the digitalisation of tax administration processes, the review of anti-avoidance directives such as DAC6 and ATAD and easing compliance requirements for businesses demonstrating good tax practices.

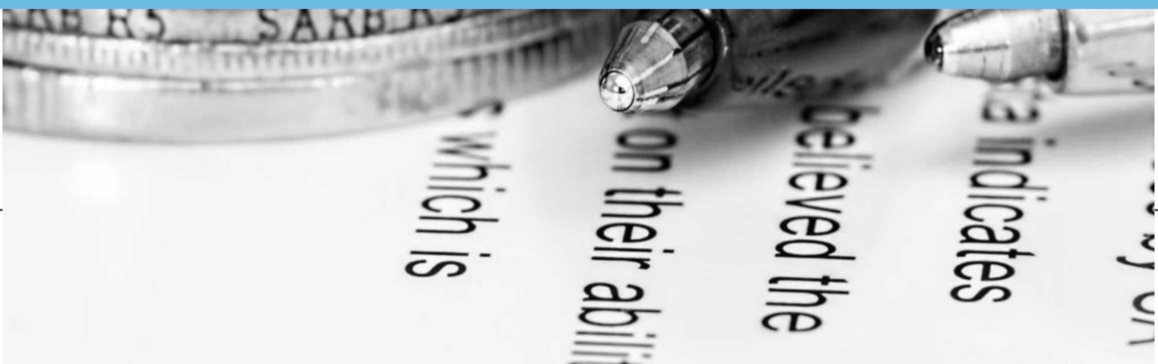
While there was agreement on the importance of reducing complexity, debates emerged regarding the balance between EU-wide tax harmonisation and respecting Member States' fiscal autonomy. Experts suggested closer coordination among Member States to streamline tax policies while ensuring they align with broader economic objectives.

A notable development in 2024 was the Court of Justice of the European Union's (CJEU) ruling on the Apple State aid case, which upheld the European Commission's 2016 decision that Ireland's tax rulings constituted illegal State aid, resulting in €13 billion in fines. This case underscores the EU's commitment to combating aggressive tax planning and ensuring fair competition. Margrethe Vestager, Executive Vice-President of the European Commission, engaged with FISC to discuss the implications of the judgment and the EU's broader tax policy direction. Vestager emphasised the need for reforms to address the challenges of taxing the digital economy, particularly in defining and capturing digital value, and highlighted the importance of implementing frameworks like OECD's Pillar One and creating a common EU corporate tax base.

International coordination also remains a focus for FISC, as highlighted in discussions with experts and policymakers on the roles of the UN and OECD in shaping global tax policy. These dialogues emphasised the importance of inclusive and enforceable agreements that reflect diverse national interests and capacities. Concerns were raised about the administrative burdens associated with evolving tax frameworks and the potential for policy divergence, particularly in light of the U.S. stance on implementing OECD's Pillar I and II frameworks. The subcommittee stressed the need for enhanced global transparency, including comprehensive beneficial ownership and real estate registers, as well as preparatory steps to implement equitable tax measures, such as high-net-worth individual taxes.

New EU AML Legislative Package

06



New EU Anti-Money Laundering Package

The EU's AML legislative package, adopted by the Council of the EU and published in the Official Journal on 19 June 2024, signifies a significant shift in combating money laundering and terrorism financing.

Goals of the AML Package

The AML Package represents a transformative step in harmonising and fortifying the EU's approach to anti-money laundering and countering terrorism financing, ensuring greater transparency, coordination, and effectiveness across Member States. Professionals and Member States alike are encouraged to act promptly to align with these changes.

It aims to strengthen the EU financial system's ability to detect and prevent suspicious activities and adapt regulations to address challenges from technological innovation, integrated financial flows, and global terrorist organisations.

Legal Instruments in the AML Package:

Regulation (EU) 2024/1624 (AMLR): Establishes uniform rules directly applicable across Member States, addressing private sector obligations and closing regulatory gaps.

Directive (EU) 2024/1640 (AMLD 6): Focuses on institutional frameworks at national and supra-national levels, replacing AMLD4 and AMLD5.

Regulation (EU) 2024/1620 (AMLA-R): Establishes the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA) and centralizes AML oversight.

Establishment of AMLA

On 22 February, Frankfurt was selected by the EU Parliament and EU Council as the host city for the new EU Anti-Money Laundering body, the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA). AML will begin operations on 1 July 2025. The authority will directly supervise high-risk entities starting in 2028.

The European Parliament and Council held a public hearing on 30 January on candidacy applications submitted by Member States to hold AMLA's seat. Applications were heard concerning the proposals of: Rome, Vienna, Vilnius, Riga, Frankfurt, Dublin, Madrid, Brussels and Paris.

Key Functions:

- Direct supervision of the riskiest cross-border entities in the financial sector.
- Oversight and coordination of national AML supervisors and financial intelligence units (FIUs).
- Creation of a centralised AML/CFT database for information sharing and risk assessment.

Legislative Goals and Implications

Enhanced Transparency and Access:

- Central beneficial ownership registers with strict accuracy and access requirements.
- Single access points for real estate information and improved transaction reporting.

Expanded Scope of Obliged Entities:

- Includes crypto-asset service providers, high-value goods traders, crowdfunding platforms, professional football clubs, and investment migration operators.
- New Customer Due Diligence (CDD) thresholds for transactions and specific requirements for high-risk customers.

Stronger Risk Management:

- Uniform EU-level methodologies for assessing money laundering and terrorism financing risks.
- Enhanced cooperation between national authorities and the AMLA for cross-border risk mitigation.

Implementation Timeline

- Provisions in AMLD 6 must be transposed by Member States between 2025 and 2029, depending on specific articles.
- AMLR provisions, including rules on private sector obligations, take full effect by 10 July 2027.

Implications for Professionals

Impact on Tax Advisers, Accountants, and Auditors:

- Stricter compliance requirements and expanded reporting obligations under AMLR and AMLD 6.
- Enhanced due diligence obligations and access to centralized registers for conducting CDD.

Professionals are urged to identify operational gaps and begin compliance preparations ahead of the deadlines.

EU Commission 2024 Evaluations

07

EU Commission Evaluations: Review of DAC, ATAC & Tax Dispute Resolution Mechanisms

DAC Evaluation

CFE Tax Advisers Europe published an Opinion Statement responding to an EU Commission evaluation of the Directive on Administrative Cooperation in the field of taxation in The European Union Union ("DAC" – Directive 2011/16/EU).

The EU Directive on Administrative Cooperation in the field of taxation (2016/16/EU), "DAC", is the key instrument of the European Union for exchange of tax-related information and cooperation among revenue administrations of Member States in the area of direct taxation. The overall objective is to provide tools to better fight tax evasion and fraud, and to contribute to better assessment and overview of arrangements that fall within scope of the directive through exchange of relevant information among tax administrations.

CFE's comments focus on DAC6, the iteration of the Directive that introduces mandatory disclosure rules in the European Union. CFE Tax Advisers Europe participated in the European Commission high-level consultation in 2023 focusing on interviews with various stakeholders. This submission aimed to reinforce the assessment provided to the European Commission, with an aim to simplify and unify the DAC directive, evaluate the compliance burden, and identify effective and ineffective aspects of DAC.

CFE opined that the European Commission should evaluate whether the rules are still fit for purpose and proportionate, and to explore policy options that could simplify the rules overall. C

FE's overall aim is to support policymakers in achieving the objectives above while ensuring that secondary EU law and reporting obligations are proportionate and do not over-burden businesses or advisers, thereby undermining the policy goals of such initiatives and ultimately the competitiveness and the resilience of the Single Market.

CFE in its statement identifies issues and makes recommendations surrounding the following:

- General Simplification of the Directive & Recast of Consolidated Version;
- Transparency of Reporting;
- Pillar 2 Compatibility;
- Professional Privilege;
- Revision of Hallmarks – Broad Hallmarks & Commercially Valid Transactions;
- Penalties; and
- Taxpayers Rights – Overall Balance of Rights and Obligations in the Single Market.

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

CFE Opinion Statement on the Evaluation of the EU Anti-Tax Avoidance Directive

CFE Tax Advisers Europe published an Opinion Statement responding to the European Commission public consultation on the evaluation of the EU's EU Anti-Tax Avoidance Directive ("ATAD"), Council Directive (EU) 2016/1164 of 12 July 2016 as amended by Council Directive (EU) 2017/952 of 29 May 2017.

CFE's comments did not relate to the Commission's focus on quantitative assessment of the effectiveness of the measures as a minimum standard for addressing aggressive tax planning, nor to aspects such as evaluation of budget revenue generated as a result of the measures or costs for the stakeholders concerned, in particular tax administrations and affected businesses, as CFE does not possess such evidence nor data.

Furthermore, CFE noted the difficulty in assessing ATAD's effectiveness is partly due to delayed implementation in some Member states of the EU, the requirement for tax authorities to audit companies and apply ATAD provisions, and the lack of published decisions on ATAD application.

Key points made in the CFE Opinion Statement included the following:

- ATAD poses a significant compliance burden, and implementation has resulted in increased complexity, particularly when layered on top of existing national rules. CFE's primary remarks surrounded the complexity of the EU's anti-avoidance framework and this potentially hindering the EU's competitiveness and ease of doing business. CFE noted the urgent need to create a more coherent tax-avoidance structure and reduce complexity in EU tax rules.
- ATAD has been effective in establishing the EU's anti-avoidance system and changing mentality, however its implementation has led to increased administrative burdens for businesses. The lack of comprehensive data makes it challenging to fully assess ATAD's effectiveness.
- There is an urgent need to align ATAD with newer initiatives such as EU's Directive on Minimum Tax (Pillar Two) and create a more coherent structure for EU tax rules. CFE noted the need for further simplification, to improve on the clarity of concepts and the need to implement definitions. CFE's emphasised the need to "declutter" the EU's anti-avoidance legislation (ATAD and partly DAC6), especially for companies in scope of Pillar Two, to reduce complexity and potential redundancies or duplication in reporting requirements.

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

CFE Statement - EU Tax Dispute Resolution Mechanisms Review

CFE Tax Advisers Europe published an Opinion Statement responding to a consultation of the European Commission concerning the operation of the Directive on Tax Dispute Resolution Mechanisms in the European Union.

Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union (the "DRM") was adopted by Member States on 10 October 2017 and is applicable as from 1 July 2019. It lays down rules on a mechanism to resolve disputes between Member States when those disputes arise from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital. It also lays down the rights and obligations of the affected persons when such disputes arise.

CFE welcomes the adoption of the DRM Directive which it considers to be a positive development for the protection of taxpayers' rights as explained in our previous Opinion Statements on this matter. It is however still too early to have sufficient practical experience in relation to the functioning of the DRM as it has only been operational since 1 July 2019. There are nevertheless outstanding issues that, in CFE's view, merit further consideration.

In particular, CFE in its Statement raised the following points:

- Closer involvement of the taxpayer in the process would increase tax certainty and the trust of taxpayers in these types of dispute resolution procedures;
- Relationships between taxpayers and tax administrations would be improved if transparency would be reciprocal. Improving tax transparency of tax administrations towards taxpayers would enhance the trust of taxpayers and legal certainty;
- Member States and tax administrations should have the duty to provide guidelines to taxpayers on the implementation and application of the DRM;
- It is crucial to remove barriers to entry to certain remedies, such as tax administrations imposing criminal penalties or pushing for settlements by offering better bargaining positions to close the door to MAP;
- It is important to ensure that the DRM is an appropriate tool to deal with future disputes related to the application of the Pillar 2 rules as implemented in the EU through Council Directive (EU) 2022/2523;
- The number of disputes may increase in the EU should the Proposal for a Council Directive on transfer pricing be adopted given it sets the threshold for control at a 25% shareholding, while the OECD Transfer Pricing Guidelines apply a 50% shareholding threshold to determine whether the control criterion is met. This 25% threshold would dramatically increase the transfer pricing compliance burden of companies operating in the EU and as a consequence broaden the scope of transactions potentially subject to dispute between two tax administrations in the EU.

CFE hopes that these comments will be helpful to the Commission in the review the functioning of the DRM.

International Tax Developments

08

TAX DEVELOPMENTS AT OECD

In 2024, under the mandate of the G20, the Organisation for Economic Co-operation and Development (OECD) continues to progress global efforts to combat harmful tax practices, enhance transparency, and ensure fair taxation for multinational enterprises (MNEs).

As part of its Base Erosion and Profit Shifting (BEPS) initiative, the OECD has made significant strides in advancing its global tax reform agenda throughout 2024.

Progress on Harmful Tax Practices Under BEPS Action 5

The OECD's Forum on Harmful Tax Practices (FHTP) focuses on evaluating tax regimes to ensure they align with the minimum standards established under BEPS Action 5. This work addresses concerns about preferential tax regimes that could facilitate profit shifting and harmful competition.

Tax Regime Reviews:
To date, the OECD has reviewed a total of 322 tax regimes globally. Of these, approximately 40% have been abolished or are in the process of being eliminated. 60% of the remaining regimes were amended to comply with OECD standards, demonstrating global commitment to reducing harmful tax practices.

Key Country Developments:
Several jurisdictions have updated their tax frameworks in line with the OECD's recommendations:

- **Albania**: Discontinued tax incentives for software production.
- **Armenia**: Eliminated tax benefits for IT project activities.
- **Hong Kong**: Modified tax concessions for family office operations.
- **United Arab Emirates (UAE)**: Amended free zone tax regimes to align with BEPS-compliant standards, including limits on preferential treatment.

These changes reflect the growing impact of the OECD's work in encouraging fair tax competition and transparency.

GloBE Rules Commentary and Implementation

As part of the BEPS two-pillar solution to address the challenges of the digital economy, the OECD released updated guidance on the Global Anti-Base Erosion (GloBE) Rules in 2024. These rules are central to the minimum global corporate tax framework under Pillar Two, which ensures MNEs pay a minimum tax of 15%, regardless of where they operate.

The guidance aims to ensure consistent application of the global minimum tax by tax administrations and multinational enterprises (MNEs). Progress has been reported in implementing the Subject-to-Tax Rule (STTR) and expanding coverage of Pillar Two by jurisdictions.

Updated Commentary:
The OECD released an updated consolidated commentary, incorporating feedback and clarifications to facilitate better understanding of the GloBE Model Rules.

The document provides detailed guidance for both tax administrations and MNEs on applying the rules, covering areas such as income inclusion, tax computation, and compliance requirements.

Administrative Guidance:
To support consistent implementation, the OECD also issued technical notes on critical issues, ensuring a unified approach across jurisdictions.

Significance for MNEs:
The GloBE rules are expected to impact MNE tax planning strategies significantly, requiring firms to align their operations with the new framework and avoid penalties under the global minimum tax regime.

Two-Pillar Solution for International Tax Reform

At the G20, the OECD reported advancements in the Two-Pillar Solution addressing digital economy taxation:

- **Pillar One**: Near consensus on implementing Amount A through a Multilateral Convention (MLC) and ongoing work on Amount B.
- **Pillar Two**: Over 40 jurisdictions have begun implementing the global minimum tax, stabilising the global tax framework and reducing harmful tax competition.

Tax Transparency and Exchange of Information

The OECD continues to enhance transparency through frameworks like the **Common Reporting Standard (CRS)** and the new **Crypto-Asset Reporting Framework (CARF)**. Recent developments include:

- **CRS Updates**: Expanded scope and improved data structuring for financial account information exchanges.
- **CARF**: Aimed at automatic crypto-asset information exchange, with 61 jurisdictions committed to adoption by 2028.

The **Global Forum on Transparency and Exchange of Information** reported the exchange of information on 134 million financial accounts valued at EUR 12 trillion in 2023, bolstering compliance and transparency.

Tax Arbitrage and Administrative Developments

The OECD published a working paper on tax arbitrage trends, revealing incentives for business incorporation to minimise tax. The 12th edition of the **Tax Administration Series** detailed innovations in e-administration, including AI tools and electronic filing, alongside an exploration of tax gap estimation methodologies.

Mutual Agreement Procedures (MAP) and Dispute Resolution

The Manual on Effective Mutual Agreement Procedures (MEMAP) was made available online, providing best practices for resolving international tax disputes under existing treaty frameworks.

Looking Ahead: OECD's Tax Agenda

The OECD remains committed to addressing tax base erosion, profit shifting, and harmful tax competition. Key priorities include:

1. Continuing reviews of preferential tax regimes to ensure compliance with BEPS standards.
2. Supporting jurisdictions in the implementation of the GloBE Model Rules under Pillar Two.
3. Strengthening international cooperation on tax transparency and beneficial ownership.
4. Collaborating with regional organisations like the EU to monitor progress and ensure accountability among jurisdictions.

Through its comprehensive framework and collaborative efforts, the OECD aims to create a fairer, more transparent global tax system in 2024 and beyond.

State Aid & Case Law Updates

09

DECISIONS OF THE EUROPEAN COURT OF JUSTICE

The European Court of Justice (ECJ) delivered pivotal rulings this year on tax matters, addressing issues ranging from tax transparency to State aid and intra-group financing, significantly shaping EU tax policy.

In **Case C-623/22**, the Court upheld Directive 2018/822 (DAC6), a critical tool in combating aggressive tax planning. Advocate General (AG) Emiliou emphasised that DAC6 aligns with EU primary law, balancing transparency objectives with legal certainty. The Court clarified that legal professional privilege (LPP) applies exclusively to lawyers, while other tax professionals must comply with reporting obligations.

Similarly, in **Case C-432/23**, AG Kokott underscored the importance of LPP, suggesting a careful balance between protecting client-lawyer confidentiality and ensuring tax cooperation. These decisions reinforce the EU's commitment to enhancing tax transparency while safeguarding fundamental rights.

In State aid rulings, the ECJ shaped the intersection of tax measures and competition law. The **Apple case (Joined Cases C-465/20 P)** marked a significant development, with the Court endorsing the European Commission's finding that Ireland's tax rulings provided illegal State aid by selectively reducing Apple's tax liabilities, amounting to €13 billion. Conversely, in the **Engie case (Joined Cases C-451/21P and C-454/21P),** the ECJ annulled a prior State aid ruling, with a more nuanced view on the matter compared to the Apple case.

Additionally, in **Case C-585/22,** the Court upheld Dutch laws limiting intra-group interest deductions to prevent tax evasion, reaffirming the legitimacy of national anti-abuse measures when proportional. These rulings collectively emphasise the ECJ's role in harmonising EU tax policy, maintaining fiscal discipline, and combating tax avoidance.

CASES IN FOCUS:

DAC6 Mandatory Reporting Waiver and Legal Professional Privilege – C-623/22 – *Belgian Association of Tax Lawyers*

The Court of Justice of the European Union (CJEU) provided clarity on the scope of legal professional privilege (LPP) and its application under Council Directive 2011/16/EU, as amended by Directive (EU) 2018/822 ("DAC6"), which mandates the reporting of certain cross-border tax arrangements, in the judgment in **Case C-623/22** (Belgian Association of Tax Lawyers and Others).

Key Findings of the CJEU Judgment

Legal Professional Privilege (LPP) Exclusivity

The CJEU reaffirmed that LPP applies exclusively to practising lawyers as defined under EU law, including those registered in another EU Member State under fundamental freedoms.

Non-lawyer professionals, such as accountants or tax advisors, do not benefit from LPP and are fully subject to DAC6's reporting obligations.

Scope and Compatibility with EU Fundamental Rights
The Court held that DAC6 complies with Articles 7 and 8 of the **Charter of Fundamental Rights of the European Union**, which safeguard private life and personal data. The reporting obligations imposed on intermediaries do not breach these rights as long as Member States implement appropriate safeguards.

Proportionality of Reporting Obligations
The Court ruled that DAC6's reporting requirements are proportionate and necessary to achieve its aims of combating tax evasion and enhancing transparency. The obligations do not excessively infringe upon intermediaries' rights under the Charter, as they reflect a balance between confidentiality and public interest.

National Discretion in Waiver Implementation
Under Article 8ab(5) of DAC6, Member States may grant a reporting waiver to lawyers when the obligation would conflict with LPP as recognised by national law. However, this discretion is limited to lawyers, and exceptions for other professionals must align with the same principles.

<u>Comparison to Advocate General Emiliou's Opinion</u>

The Advocate General's Opinion, delivered on 29 February 2024, aligns with many aspects of the CJEU judgment but also provides additional perspectives on the reasoning behind DAC6's provisions.

Legal Professional Privilege and the Scope of DAC6
The Advocate General supported the CJEU's conclusion that LPP is limited to practising lawyers under EU law and noted its critical role in preserving the confidentiality of lawyer-client communications. The Opinion also cited prior case law, such as **Orde van Vlaamse Balies**, to underscore the rootedness of LPP in European legal traditions.

However, the AG emphasised that Member States have discretion to extend similar protections to other professionals in exceptional cases, provided such extensions are compatible with national law.

Complexity and Clarity of Reporting Obligations
While the Court focused on the proportionality of DAC6's obligations, the Advocate General addressed concerns about the Directive's complexity. The AG argued that the terms and scope of DAC6 are intentionally broad to cover diverse tax arrangements but remain comprehensible to professionals in the field. Traditional legal interpretive methods and the context of tax law provide sufficient clarity, according to the AG.

Proportionality and Legality of DAC6
The Advocate General similarly concluded that DAC6 does not infringe on the principle of legality of penalties under Article 49(1) of the Charter.

The AG emphasised that aggressive tax planning often involves sophisticated instruments, and intermediaries are expected to understand their reporting obligations.

The AG also agreed with the Court that DAC6 is proportionate, as its reporting requirements are necessary to achieve the EU's objectives of preventing tax evasion and enhancing transparency.

Balancing Confidentiality with Public Interest
Both the CJEU and the Advocate General highlighted the importance of balancing confidentiality with the public interest in combating tax avoidance. The AG noted that reporting obligations for non-lawyer intermediaries do not constitute an unacceptable interference with confidentiality rights under Article 7 of the Charter, as these obligations are reasonable in the context of modern tax compliance.

Implications

The CJEU judgment, reinforced by the Advocate General's Opinion, underscores the EU's commitment to transparency and cooperation in tax matters. While recognising the unique role of LPP for lawyers, the rulings affirm that DAC6's reporting obligations are proportionate, justified, and aligned with the Charter's fundamental rights.

By clarifying the responsibilities of lawyers and other intermediaries, the CJEU has reinforced the balance between taxpayer privacy and the public interest in preventing tax avoidance and evasion, ensuring fair and effective tax administration across the EU.

Case C-432/23: *F, Ordre des Avocats du Barreau de Luxembourg* - Professional Secrecy of a Lawyer Under DAC

On 26 September 2024, the Court of Justice of the European Union (CJEU) delivered its judgment in Case C-432/23, *Ordre des Avocats du Barreau de Luxembourg v. Administration des contributions directes*, addressing the professional secrecy of lawyers under Directive 2011/16/EU on administrative cooperation in taxation. This decision provides significant clarification on the extent to which legal professional privilege (LPP) protects communications between lawyers and their clients, particularly in the context of tax-related advice and the obligations imposed by the Directive.

Key Findings of the CJEU Judgment:

Scope of Legal Professional Privilege (LPP):
The CJEU affirmed that legal advice provided by lawyers, including on matters such as company law (e.g., establishing corporate investment structures), is protected under LPP as guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union. This protection applies regardless of the legal field in which the advice is given.

Interference with Lawyer-Client Communications:
The Court held that a tax authority's decision requiring a law firm to disclose all documentation related to specific transactions and the firm's involvement constitutes an interference with the right to respect for communications between lawyers and their clients, as protected by Article 7 of the Charter.

Compatibility with Directive 2011/16/EU:
The CJEU determined that Directive 2011/16/EU is compatible with Articles 7 and 52(1) of the Charter. The Directive does not explicitly permit interference with the confidentiality of lawyer-client communications beyond the provisions of Article 17(4), thereby allowing Member States sufficient discretion to uphold the requirements of Article 7 of the Charter.

National Legislation and Balancing Interests:
The Court emphasised that national laws must define the conditions, scope, and limits of lawyers' duty to cooperate in the context of information exchange requests under Directive 2011/16/EU. Such legislation should enable authorities to balance, on a case-by-case basis, the objectives of general interest against the protection afforded by LPP. The CJEU found that Luxembourg law, which does not permit such a balance in tax matters, is precluded by Article 7 of the Charter to that extent.

Comparison with Advocate General Kokott's Opinion:

The Court's judgment aligns with several key aspects of Advocate General Kokott's Opinion but also introduces subtle distinctions:

Recognition of Legal Professional Privilege:
Both the Advocate General and the Court agreed on the importance of LPP in protecting the confidentiality of lawyer-client communications. The Advocate General explicitly acknowledged that legal advice, even in tax matters, should not be excluded from LPP protections. The Court's judgment confirms this understanding and underscores the universal applicability of LPP across legal domains.

Scope for National Discretion:
Advocate General Kokott emphasised that Article 17(4) of Directive 2011/16/EU allows Member States discretion to balance the protection of LPP with the objectives of administrative cooperation. The Court endorsed this view but stressed the necessity for Member States to create legal frameworks ensuring this balance can be achieved in practice. This highlighted a deficiency in Luxembourg law, which the Advocate General also noted.

Proportionality and Case-by-Case Analysis:
Both the Advocate General and the Court highlighted the need for proportionality in balancing the interests of tax administration against the fundamental rights of taxpayers and lawyers. However, the Court placed additional emphasis on the importance of national legal provisions explicitly enabling such case-by-case assessments.

Clarification of Directive Compatibility:
The Advocate General's Opinion suggested that Directive 2011/16/EU is compatible with the Charter, provided national laws allow for the necessary balancing of rights. The Court confirmed this but was more explicit in identifying the absence of such mechanisms in Luxembourg law as a violation of Article 7 of the Charter.

Conclusion:

The Court's judgment broadly follows the reasoning of Advocate General Kokott but goes further in specifying the responsibilities of Member States to implement mechanisms ensuring compliance with fundamental rights. While the Advocate General focused on the theoretical compatibility of Directive 2011/16/EU with the Charter, the Court highlighted practical deficiencies in Luxembourg's implementation, emphasising the need for national legislation to strike a fair balance between the objectives of tax cooperation and the protection of LPP. This judgment thus serves as a robust affirmation of LPP's role in safeguarding fundamental rights within the EU legal framework.

State Aid: Court of Justice of the EU Endorses 2016 Commission Tax Assessment of 13 Billion Euro in Apple Case

On 10 September 2024, the Grand Chamber of the Court of Justice of the European Union (CJEU) delivered a final judgment on one of the most prominent tax State aid cases, concluding a decade-long dispute between the European Commission (EC), Apple, and Ireland (Joined Cases C-465/20 P, *Commission v Ireland and Others*).

The case centred on the misattribution of profits of Irish PEs in administrative tax rulings issued by Ireland in 1991 and 2007 to Apple Operations Europe (AOE) and Apple Sales International (ASI), two subsidiaries of Apple Inc. The EC argued that these rulings allowed Apple to misattribute profits, worth around €100 billion, away from the branches in Ireland, resulting in an economic advantage of €13 billion over the period from 2003 to 2014. In its primary line of reasoning in the Commission Decision of 2016, the EC contended that this constituted illegal state aid under EU law, as Apple's Irish entities were only taxed on income generated by their branches, despite the intellectual property (IP) driving most of their profits being held abroad on basis of a Cost Sharing Agreement (CSA).

The EC's primary line of reasoning in the 2016 Decision, endorsed by CJEU, argued that Apple's subsidiaries artificially allocated income to "head offices" without sufficient economic justification, and that the Irish branches should have been attributed a larger portion of the profits due to their role in Apple's wider business model. The General Court (GC) had previously dismissed these arguments, finding that the Commission had failed to demonstrate in its 2016 Decision that the Irish tax rulings provided Apple with a selective advantage under Article 107(1) of the TFEU (Treaty on the Functioning of the European Union). However, the CJEU has now annulled this GC judgment, ruling that the European Commission had not made errors in its economic analysis of Apple's profit allocation and that the GC had incorrectly interpreted the original decision of the European Commission.

The CJEU reviewed the merits of the Commission decision without referring the case back to the lower court. It upheld the EC's original conclusion that Apple had received a selective advantage, and that Ireland's tax rulings constituted illegal State aid by lowering Apple's tax liability in a way that provided Apple with an advantage over other companies in a similar factual and legal situation. The CJEU also rejected Apple's and Ireland's claims regarding procedural breaches, legal certainty, and Ireland's fiscal autonomy, thereby endorsing the EC's original decision of 2016 in full.

As a consequence, the finding of €13bn of assessed taxes, held in escrow during the litigation process and now due to the Irish revenue, was fully upheld. In its original State aid decision, the European Commission noted that there was a possibility that other countries, i.e. "third countries", may seek to tax some of the profits which the Commission allocated to the Irish branches of the Apple companies.

In that event, the Commission noted that the amount of State aid would therefore be reduced from the headline figure they had proposed. In line with the Commission decision, other countries could claim a portion of these back taxes by way of further adjustments.

According to the Irish Department of Finance, such third country adjustments have taken place on two occasions since the establishment of the Escrow Fund, with a total of €455m paid out in third country adjustments since 2019. €209m was returned to Apple during 2019. A further third country adjustment took place in May 2021 for €246m.

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

CFE 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.

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 this judgement vis-à-vis its previous case law in future decisions.

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

CFE ECJ Task Force Opinion Statement on Joined Cases C-451/21P & C-454/21P Engie State Aid in Deduction/Non-Inclusion Structure in Luxembourg

CFE issued an Opinion Statement on the decision of the CJEU of 5 December 2023 in Joined Cases C-451/21P and C-454/21P, *Engie*, on alleged State aid in relation to a deduction/non-inclusion structure in Luxembourg.

The *Engie case* concerns the question whether tax rulings issued by Luxembourg to companies part of the French energy group Engie are compatible with primary EU law, notably rules on State aid; and, whether, and to what extent, the Commission can invoke the concept of “abuse of law” for a State aid challenge of *ex ante* tax assessment issued by a tax authority of a Member state in the form of a tax ruling.

The Court set aside the General Court judgment of 12 May 2021, which initially upheld the European Commission findings of State aid. The CJEU’s Grand Chamber found that the European Commission did not establish to the appropriate legal standard that the tax rulings related to the zero-interest convertible loan (ZORA) provided selective advantage for the Engie entities. It did not establish the correct reference framework for assessment of State aid by way of excluding the legal basis for the tax ruling practice from the reference framework itself (Articles 164 and 166 LIR). By establishing an erroneous reference framework, the Commission relied on a wrongfully based selectivity analysis, a key step in establishing State aid for purposes of Article 107(1) TFEU.

Finally, the Court established that the Commission cannot invoke national anti-abuse rules to establish selectivity in a situation where the non-application of the “abuse of law” concept by tax authorities unless the non-application of the anti-abuse provisions is based on derogation from national law or administrative practice on anti-abuse provisions comparable to the case at issue (*in concreto*). Thus, the Grand Chamber judgment follows the Opinion of AG Kokott delivered on 4 May 2023.

The Court, however, opened the door for establishing selectivity of tax rulings such as those in the Engie case, where the basis for taxation consists of pre-agreed margin (mark-up), approved by the tax administration, and not under the rules of ordinary tax law, under specific conditions.

This Opinion Statement focuses on questions of law and the relevance for the development of the European Union State Aid law doctrine applicable to tax measures. The factual and corporate law aspects are analysed to the extent relevant for the State aid analysis.

CFE Tax Advisers Europe welcomes the clarification and further guidance on the applicability of Article 107(1) TFEU to national (individual) tax measures provided by the Grand Chamber of the CJEU in this judgment. It is equally relevant from a perspective of competence (overlap of national corporate tax law and primary EU law, i.e. rules on State aid), and from the perspective of compliance of Member States' fiscal autonomy with the applicable rules on State aid.

Following *Fiat*, the CJEU confirmed that the Commission is in principle obliged to follow the Member State's interpretation of national law, unless the Commission is able to prove, after an exchange of arguments with the Member State concerned, that another interpretation of national law prevails in the case-law or administrative practice of that Member State. The Court's decision contributes to the dynamic balance of powers in the European Union's legal order.

Following the *Fiat* and *Engie* judgments, the review of national tax measures remains possible but under strict conditions. The CJEU did not endorse a mere "plausibility check". However, the Court pointed the Commission to another direction for challenging individual tax ruling such as those in the Engie case, where the basis of taxation consists of pre-agreed margin (mark-up), approved by the tax administration, and not under the rules of ordinary tax law. Therefore, the Luxembourg tax rulings practice may be under further investigation after this decision, albeit on a different basis.

Court of Justice of the EU Upholds Dutch Rules on Intra-Group Loan Interest Deduction - Case C-585/22

The European Court of Justice (ECJ) has upheld Dutch legislation that limits the deduction of interest on intra-group loans as a measure to combat tax fraud and evasion, ruling in Case C-585/22 *Staatssecretaris van Financiën* (Interest in respect of an intra-group loan) that Dutch legislation limiting the deduction of interest on intra-group loans is compatible with EU law as it aims to combat tax fraud and tax evasion.

The case involved a Dutch company, part of a multinational group, which financed a share acquisition through a loan from a related Belgian entity. The Dutch tax authorities denied the deduction of interest paid on the loan, suspecting the arrangement was designed to reduce taxable profits.

The ECJ confirmed that the Dutch law, which presumes intra-group loans may be part of artificial tax arrangements, could deter cross-border business activities. However, it also found that the legislation serves the legitimate goal of preventing companies from using internal group funds to create tax advantages through artificial arrangements.

The Court noted that taxpayers have the right to rebut this presumption by proving the economic reality of the transactions. If a loan's interest rate is excessively high but economically justified, the deduction may be limited to the normal market rate. However, if the loan lacks real economic justification and is solely aimed at securing a tax advantage, the entire deduction can be denied.

The judgment reinforces the principle that national laws targeting tax fraud can restrict certain tax advantages in cross-border situations, provided they are proportional and justified.

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