BRUSSELS | APRIL 2023

EU Commission Adopts Regulation on Tax Transparency

The European Commission has adopted an Implementing Regulation concerning tax transparency and the criteria for information reported by platforms to non-EU countries and exchanged with Member States.

This Regulation establishes criteria for determining whether information automatically exchanged under an agreement between the tax authorities of Member States and a non-EU country is equivalent to that specified in Council Directive (EU) 2021/514 ('DAC7'), i.e. mandatory automatic exchange of information reported by platform operators.

The Implementing Regulation establishes criteria to be considered by the Commission in assessing equivalence of exchange process, concerning definitions such as Reporting Platform Operator, Reportable Sellers and Relevant Activity, assessing due diligence procedures, reporting requirements and procedures. The Regulation will enter into force 20 days after its publication in the Official Journal of the European Union.

EU Commission Refers Belgium to ECJ Over ATAD Implementation

The European Commission has referred Belgium to the Court of Justice of the European Union concerning its transposition of the CFC rules under the Anti-Tax Avoidance Directive (Directive (EU) 2016/1164).

Under the Anti-Tax Avoidance Directive, a Member State where a parent company of a MNE is located is able to tax profits of a 'controlled foreign company' in another Member State when the tax paid by the controlled foreign company is less than half of what would be paid in the Member State of the parent company (the CFC rule). The company should be granted a tax credit for all taxes that it has paid abroad. However, contrary to the Directive, Belgian law does not allow a taxpayer to deduct from its tax liability the tax already paid by a controlled foreign company in the state of tax residence.

The Commission initially issued a letter of formal notice on 2 July 2020, followed by a reasoned opinion on 1 December 2021, in which it requested that Belgium amend their legislation within two months. The Commission did not consider that Belgium's reply to the reasoned opinion was satisfactory, and has as such now decided to refer Belgium to the Court of Justice of the European Union.

European Parliament Approves Carbon Border Adjustment Mechanism & Emissions Trading Scheme Reforms

---

The European Parliament has now approved the provisional agreement reached with the European Council in December 2022 concerning the European Union's key legislative reforms to reduce greenhouse gas emissions by 55% by 2030, namely the Carbon Border Adjustment Mechanism ("CBAM"), reform of the Emissions Trading System ("ETS") and the Social Climate Fund.

Carbon Border Adjustment Mechanism

The CBAM aims to incentivise non-EU countries to increase their climate ambition and to ensure that EU and global climate efforts are not undermined by production being relocated from the EU to countries with less ambitious policies. The goods covered by CBAM are iron, steel, cement, aluminium, fertilisers, electricity, hydrogen as well as indirect emissions under certain conditions. Importers of these goods would have to pay any price difference between the carbon price paid in the country of production and the price of carbon allowances in the EU ETS. The CBAM will be phased in from 2026 until 2034 at the same speed as the free allowances in the EU ETS are being phased out.

Emissions Trading System

Under the reform to the ETC, emissions will be cut by 62% by 2030 compared to 2005-levels. It also phases out free allowances to companies from 2026 until 2034 and creates a separate new ETS II for fuel for road transport and buildings that will put a price on GHG emissions from these sectors in 2027 (or 2028 if energy prices are exceptionally high). It will also include emissions from the maritime sector and aviation, phasing out the free allowances to the aviation sector by 2026 and promote the use of sustainable aviation fuels.

Social Climate Fund

The deal with member states to set up an EU Social Climate Fund (SCF) in 2026 to ensure that the climate transition will be fair and socially inclusive was adopted with 521 votes to 75 and 43 abstentions. Vulnerable households, micro-enterprises and transport users who are particularly affected by energy and transport poverty will benefit from this. When fully in place, the SCF will be funded from auctioning ETS II allowances up to an amount of €65 billion, with an additional 25% covered by national resources (amounting to an estimated total of €86,7 billion).

The legal texts of the legislative proposals must now be endorsed by the European Council, following which they will be published in the Official Journal of the European Journal and enter into force 20 days later.

CFE Annual Forum & General Assembly Held in Brussels

CFE Tax Advisers Europe, the leading European association of tax institutes and associations of tax advisers, held its annual Forum and General Assembly last week in Brussels. Two panels of participants at this year's Forum entitled 'Towards a Closer EU Fiscal Union' debated the EU's VAT in the Digital Age (ViDA) proposals and the EU Directive on minimum tax (Pillar 2).

Benjamin Angel, Director, DG TAXUD, European Commission provided a key note speech reflecting on the European fiscal integration and the ensuing opportunities and challenges. Mr Angel highlighted the European Union leadership in the enactment of the Directive on minimum tax, enabling the EU to drive discussions on both Pillar 1 and 2 at the OECD level.

"*EU is having more sway in OECD discussions of the tax proposals, designed to ensure companies earning more than €750 million pay a 15% minimum tax on their global earnings. There is strength in numbers. We can shape the outcome of discussion when we speak with the same voice*.", Mr Angel said.

Separately, CFE's President Ian Hayes noted that a number of progressive initiatives have been taken by CFE as a contribution in developing modern tax systems, such as the project on professional judgment in tax planning. Highlighting the need for diversity inclusiveness and CFE's contribution to this topic, the CFE president said:

“*We are proud to have had inclusive and gender-balanced panels at our Forum, which are more reflective of our society. Excellent. As set out in the founding treaties, the European Union is committed to eliminating inequalities and promoting the principle of equality between women and men in all their actions. Achieving a more inclusive tax system is a joint responsibility of all of us, requiring action by all the EU institutions, member states, professionals and society at large.*

Today I am very proud to announce the following, might I say, progressive initative that you are all invited to: CFE Tax Advisers Europe within its Partnership Agreement with the European Parliament, alongside ICAEW and PwC Women in EU Finance Network are delighted to invite you to join us to hear and share reflections on a pathway towards a more gender equal tax system by 2030 on 4 July 2023 in the European Parliament. More details will follow in due course”**,** Mr Hayes said.

The next CFE General Assembly and the European Conference on Tax Advisers' Professional Affairs have been scheduled for 20 - 22 September 2023 in Helsinki, Finland, co-organised with *Suomen Veroasiantuntijat,* Finland's Association of Tax Professionals.

EU Parliament MEPs Adopt Position of EU AML Legislation

EU Parliament MEPs from the Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees have adopted positions on the proposed new EU Anti-Money Laundering and Countering the Financing of Terrorism legislation.

The package consists of:

- the EU “single rulebook” - regulation - with provisions on conducting due diligence on customers, transparency of beneficial owners and the use of anonymous instruments, such as crypto-assets, and new entities, such as crowdfunding platforms. It also includes provisions on so-called "golden” passports and visas. The text was adopted with 99 votes to 8 and 6 abstentions.

- The 6th Anti-Money Laundering - directive - containing national provisions on supervision and Financial Intelligence Units, as well as on access for competent authorities to necessary and reliable information, e.g. beneficial ownership registers and assets stored in free zones. The text was adopted with 107 votes to 5 and 0 abstentions.

- The regulation establishing the European Anti-Money Laundering Authority (AMLA) with supervisory and investigative powers to ensure compliance with AML/CFT requirements. The text was adopted with 102 votes to 11 and 2 abstentions.

Paul Tang (co-rapporteur for the Anti-Money Laundering directive - S&D, NL) said of the proposals: *“We are losing the battle against money laundering, which costs society up to two trillion US dollars annually worldwide. That is why parliament worked together on finding effective ways to fight money laundering, by demanding the registration of expensive cars, boats and planes and by obliging the disclosure of all goods stored in free zones. We have also restored access to beneficial ownership data for journalists and civil society organisations, introduced strong safeguards like a Fundamental Rights Officer in every Financial Intelligence Unit. I am hopeful the Council will join us in beefing up the EU’s fight against money laundering and terrorist financing."* Further detail on the agreed provisions can be found here.

The European Parliament will start negotiations on the the legislative package after the decision is confirmed during the plenary session in April.

CFE Issues Opinion Statement on European Commission ViDA Proposals

---

The CFE has issued an Opinion Statement on the European Commission VAT in the Digital Age (ViDA) legislative proposals.

CFE Tax Advisers Europe broadly welcomes the EU Commission's ViDA proposals which aim to adapt current VAT rules in the EU in light of changes brought about by digitalisation of the economy.

In seeking to support the Commission in this objective, CFE wishes to highlight a number of issues in relation to the proposals put forward by the Commission, further to the Opinion Statement submitted by CFE on 5 May 2022 in response to the EU Commission public consultation when policy options for the ViDA proposal were being considered.

Although the CFE broadly welcomes the proposals to harmonise the rules, the statement sets out a number of concerns with the proposals. CFE hopes the above comments are helpful and remain available to consult concerning the proposed Directive.

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

European Parliament Approves Rules for Tracing Crypto-Assets

The European Parliament has approved provisional rules agreed with the European Council in mid-2022 for the tracing of crypto-asset transfers. The rules will introduce a uniform legal framework for crypto-assets markets in the EU and provide the means for crypto-assets to be traced and blocked in the same way as in other traditional money transfers.

Crypto-asset Transfers

The so-called "travel rule", already used in traditional finance, will in future cover transfers of crypto assets. Information on the source of the asset and its beneficiary will have to "travel" with the transaction and be stored on both sides of the transfer.

The law would also cover transactions above €1000 from so-called self-hosted wallets (a crypto-asset wallet address of a private user) when they interact with hosted wallets managed by crypto-assets service providers. The rules do not apply to person-to-person transfers conducted without a provider or among providers acting on their own behalf.

MiCA - Uniform EU Market Rules for Crypto-Assets

MiCA will cover crypto-assets that are not regulated by existing financial services legislation. Key provisions for those issuing and trading crypto-assets (including asset-reference tokens and e-money tokens) cover transparency, disclosure, authorisation and supervision of transactions. Consumers would be better informed about the risks, costs and charges linked to their operations. In addition, the new legal framework will support market integrity and financial stability by regulating public offers of crypto-assets.

Finally, the agreed text includes measures against market manipulation and to prevent money laundering, terrorist financing and other criminal activities. To counter money-laundering risks the European Securities and Markets Authority (ESMA) should set up a public register for non-compliant crypto assets service providers that operate in the European Union without authorisation.

To reduce the high carbon footprint of crypto-currencies, significant service *providers will have to disclose their energy consumption.*

The legal texts of the legislative proposals must now be endorsed by the European Council, following which they will be published in the Official Journal of the European Journal and enter into force 20 days later.

International Fiscal Association Invites Views on Tax Avoidance in Advance of European Conference (5 - 7 July)

The International Fiscal Association (IFA) will hold its European region conference on 5-7 July 2023 in Amsterdam. Through an online survey, the organisation is collecting views on the conference theme "*Tax Avoidance in the European Union and Beyond*".

The programme focuses on the critical issues of tax avoidance, abuse of law, State aid, dispute resolution, and the EU’s green tax agenda, with participation of high-level policy makers. Marnix van Rij, Dutch State Secretary for Tax Affairs and the Tax Administration, and European Commission officials Benjamin Angel and Gerassimos Thomas will participate in the conference.

CFE Tax Advisers Europe's Director of Tax Policy, Aleksandar Ivanovski, will participate in a session dedicated to the Unshell and SAFE Directives, the European Commission's initiative addressing tax enablers. The latter initiative is set to be published a few weeks for before the conference.

CFE members are cordially invited to share their views through the survey and to join the discussions in Amsterdam. Registration is possible here.

G-24 Supports UN International Tax Cooperation Framework

During the IMF and World Bank spring meetings held in Washington in April, members of the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development, the G-24, issued a G-24 communiqué concerning the Resolution adopted by the General Assembly on 30 December 2022 which called for *"intergovernmental discussions in New York at United Nations Headquarters on ways to strengthen the inclusiveness and effectiveness of international tax cooperation through the evaluation of additional options, including the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process."* The UN Resolution requests the Secretary-General to prepare a report on all relevant international legal instruments, other documents and recommendations that address international tax cooperation and outline potential next steps, such as the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation.

In the communiqué, the G-24 endorsed the creation of a UN framework on international tax cooperation, stating: *"International tax reform is important to provide the resources necessary to invest in economic recovery, climate action and the SDGs. We therefore call for the creation of a more effective, inclusive, sustainable and equitable international tax architecture, scaling-up international tax cooperation, fighting illicit financial flows and combating aggressive tax avoidance and evasion with greater focus on capacity building to underpin next wave of international tax reforms. The introduction of a global minimum tax and taxation of the digital economy are welcome reform principles under the global tax deal agreed upon by the G20/OECD BEPS Inclusive Framework. We reiterate our calls to address the remaining issues and that the solution should be simple to administer and generate substantial new fiscal revenues for EMDEs.*

We welcome the United Nations (UN) General Assembly's resolution on Inclusive and Efficient Tax Reform Initiative. We hope that this would open the door for negotiations on international tax cooperation agreement through inclusive intergovernmental negotiations at the UN that could address the urgent issues that have so far been excluded from the OECD workstream. We support the continued efforts of the G-24 Tax Working Group to promote peer dialogue and cooperation on key tax challenges and international advocacy where it is needed."

EESC Adopts Opinion Supporting DAC8 Proposal

The European Economic and Social Committee (EESC) has now adopted an opinion concerning the DAC8 proposal. The EESC sets out the following key points in its opinion concerning the proposed Directive:

- *deems the proposed improvements to the DAC Directive to be effective in deterring non-compliance with fiscal rules by crypto-asset holders, thereby reinforcing the fight against tax fraud, tax evasion, and tax avoidance, in line with several previous initiatives of the Commission;*
- *notes that a global effort to regulate crypto-assets and their use is key in order to successfully address the growing issues and implications with a worldwide scope relating to such assets. The Committee encourages the Commission to play an active role on the international stage;*
- *appreciates that enhanced and more effective taxation of crypto-assets will help increase the coverage of taxation and boost national budgets, allowing the deployment of additional resources targeted at the common good and at the investment priorities of the Commission (green transition and digitalisation);*

- *considers that the tax identification number ("TIN") reporting system is the most effective compliance method for ensuring the effectiveness of the new rules. The Committee supports the Commission's proposal on TIN since it contributes to preventing possible mistakes, thereby improving legal certainty and the predictability of the system;*
- *deems that reporting obligations should not only be limited to exchanges and transfers in crypto-assets, but should also be extended, at least during the initial phase, to overall holdings of crypto-currency assets for the sake of transparency and certainty, although it remains clear that taxation should only apply to effective gains;*
- *stresses the need for effective and proportional penalties, leaving to Member States the decision on the specific amounts of sanctions to be issued and recommends that, after the implementation of the Directive, the Commission reports on the penalty structures implemented by Member States, giving guidance on possible changes if needed;*
- *hopes that the penalties and compliance measures will be able to strike a proper balance between effectiveness of the rules and adequate deterrence on the one hand and proportionality on the other hand;*
- *recommends that the Commission include in its draft proposal rules to enhance the cooperation between the tax authorities already covered by the current text and the authorities in charge of combatting money laundering and the financing of illegal activities and terrorism. In this context, the Committee reiterates that public authorities, in this case tax authorities, require adequate resources in terms of both qualified personnel and high-grade digital technology and standards.*

The full opinion can be accessed here.

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