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US House Approves Minimum Corporate Tax Legislation

In November, the United States House of Representatives approved President Biden's Build Back Better Act ([H.R. 5376](#)), a comprehensive legislation which also includes provisions relating to the OECD global tax agreement. The bill was passed with a narrow margin in favour ([220-213](#)), with Representatives voting largely on party lines. The Build Back Better Act imposes a 15% minimum tax on the profits of certain MNEs with profits exceeding \$1 billion (S-corporations excluded), and the tax would be payable on adjusted financial statement income for the year over the amount of its corporate AMT foreign tax credit, the US Journal of Accountancy [reported](#). The Build Better Back Act includes a large relief and infrastructure support package amounting to \$1.75 trillion, being the largest social support legislation in the recent US history. The act still requires Senate approval to be enacted into law.

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, [said last week](#) that the arrangement might be fiscally favourable for the US, and that the OECD negotiators had in mind the US Senate ratification, which is the reason why they built in a mechanism to make US passing a 'no brainer'. 'There is a serious chance of success', Mr Saint-Amans said.

In the interim, BIAAC, a group representing business stakeholder interests at the OECD, have written a [letter](#) calling on the Working Parties and the OECD to include non-governmental players such as BIAAC in the process of

implementation with 'technical and practical help', now that the policy choices have been made and finalised. Contending that the global tax reform project is a historic one with multiple impacts, BIAC argues that not only tax technical questions matter, but also large macroeconomic issues concerning trade, investment, jobs and growth.

"Business at OECD Tax Committee and the BAGs stand ready to offer practical and technical advice to the TFDE and WP11 that we hope will result in the Project restoring stability and certainty to the international tax system for all stakeholders. The past several months have been, we believe, an aberration. We, thus, look forward to restoring a relationship where – to be very clear – you make the policy calls, but where we can advise on ways of designing rules that embody those policies which will carry the greatest chance of consistent and successful implementation.", BIAC's letter to the OECD states.

EU Commission 2022 Work Programme & Q4 Tax Policy Priorities

The European Commission [work programme](#) for 2022 indicates that the EU will focus its taxation policy priorities on implementation of the global tax agreement concerning Pillars 1 and 2. The work programme states the "European Commission will now strive to show the EU's leadership in global tax fairness, by ensuring a swift and consistent implementation across the EU." Implementation of Pillar 1 largely depends on the ongoing technical level work at the OECD, which should inform the EU legislative process. Depending on the agreed solution, EU's implementation of Pillar 1 OECD global agreement on re-allocation of taxing rights might come as a legislative item (directive), under Article 115 TFEU, which requires consensus of all Member states.

Regarding the work priorities for the last quarter of 2021, the Commission list of points for the next scheduled college meetings indicates that two draft directives are in the pipeline, with publication date set for 22 December 2021:

- Directive to fight the use of shell entities; and,
- Proposal on implementation of the OECD global agreement on minimum effective taxation (Pillar 2).

Alternatively, Commission's work programme indicates that a non-legislative proposal would come the latest in Q3 2022 in the form of a Recommendation on minimum income.

This EU proposal will be complemented with a Directive on minimum effective tax rates disclosure, concerning entities within scope of the Directive implementing Pillar 2 in the European Union. It is unclear yet what the legal basis for such a proposal would be, given the disclosure of tax related information had previously created tension between the Commission and Council (Member states) regarding the draft directive on public country-by-country reporting (CbCR).

Concerning the initiative to fight the use of shell entities, the EU intends to allow Member states to tax a shell entity located in another EU Member state, satisfying certain conditions, as if the shell were located within their own taxing jurisdiction. It is expected that the criteria identifying a company as a 'shell entity' would be based on a methodology similar to the one already used by the EU in the DAC6 hallmarks.

Carbon Trading Mechanism Agreed at COP26: World's Climate Policy Summit

World leaders and their negotiating teams attending the UN Conference on Climate Change (COP26) [agreed](#) on a market-based mechanism to enable countries to trade in carbon offsets, in line with previous goals set under Article 6 of the 2015 Paris climate agreement. The mechanism will allow countries to trade in carbon credits, for the purposes of offsetting these against emissions, in order to meet climate targets. Negotiators agreed a two-track system, a private

system in which bilateral trades of offsets will not be subject to any tax, and a separate centralised public system in which 2% of offset credits will be cancelled, to discourage the overuse of offsets and increase cuts in overall emissions. A 5% levy will also be collected in this system, to fund adaptation for developing countries. It is expected that investment in schemes that generate carbon credits will see a significant increase following the agreement of the mechanism.

During an event held by POLITICO last week, French Secretary of State for Europe Clément Beaune also confirmed that France will prioritise negotiations to reach an EU deal on the proposed Carbon Border Adjustment Mechanism when it takes over the Presidency of the Council of the EU from 1 January 2022. The EU proposal aims to level the playing field with imported goods from countries which do not apply the same standards as Europe, thus preventing carbon leakage. To do so, the Directive aims to put a price on carbon-intensive imports, such as steel, electricity and fertilisers, thus encouraging trade partners to implement similar green policies at home. As a result, global reduction of carbon emissions could be achieved simultaneously. A Social Climate Fund is planned to help Member states facilitate the green transition and avoid situations where certain Member states or regions are left behind.

Member States have pushed to exempt certain countries from the proposals, which Mr Beaune commented on during the POLITICO event, saying countries could only be exempted if they are willing to adhere to similar standards as the EU. He stated that the French approach will be to *"...try to get inspiration from what we have done successfully in the end with the digital debate. So to have first an agreement at the EU level ... but also to be open, which I think is the basic idea of these climate clubs, to an international negotiation with like-minded countries....the U.S., for instance, or the U.K, and to say: 'If you're ready to go with the same standards as we are doing, if you have the same green ambitions, there's no reason why we should have competition or a kind of adjustment mechanism between each other.'" New Zealand and Canada were also mentioned in the discussion as other potential countries to be included in the discussions.*

President von der Leyen recently commented on the proposal prior to the COP26 conference, saying that *“the EU was in favour of a global solution that would see the world’s biggest emitters agree on global carbon pricing. To avoid carbon leakage, now introduce slowly but surely a carbon border adjustment mechanism that says if you come with dirty products on our market, you have to pay a price as if you were in the Emissions Trading System of the European Union. But we prefer you keep the money in your economy by putting a price on carbon in your economy.”*

CFE's 14th European Conference on Professional Affairs: Professional Judgment in Tax Planning

The 14th European Webinar Conference on Tax Advisers’ Professional Affairs was held virtually on Thursday, 25 November 2021, on the topic of [“Professional Judgment in Tax Planning: An Ethics Quality Bar for All Tax Advisers – ‘If It Is Legal, Is It Acceptable?’”](#). The conference examined the proposed “ethics quality bar” set out in CFE’s discussion paper issued in June 2021, which proposed a set of quality bar questions for all tax advisers to reflect on when undertaking their advisory role in the overall tax system.

The virtual conference welcomed tax experts and academics, featuring: Paul Tang, MEP and Chair of the Subcommittee on Tax Matters at the European Parliament; Reinhard Biebel, Head of Unit, Direct Tax Policy & Cooperation at the European Commission; Sune Hein Bertelsen, Member of the Tax Policy Group at Business Europe; Howard Liebman, Partner at Jones Day, Brussels; Jens Poll, Chair of the Tax Planning and Related Services Task Force at the International Ethics Standards Board for Accountants and Board Member of Accountancy Europe; and Martin Manuzi, Regional Director for Europe at the Institute of Chartered Accountants in England and Wales. The conference was moderated by Philippe Vanclooster, Chair of the Professional Affairs Committee, and Aleksandar Ivanovski, Director of Tax Policy at CFE Tax Advisers Europe.

The panellists discussed the need to promote ethical professional judgment across all tax advisers, regardless of the different backgrounds, professional affiliations or absence of professional affiliations of tax advisers as well as of market access rules on tax services provision in individual jurisdictions and whether the concept as set out in the CFE paper has the potential to help achieve ethical tax planning across all tax advisers within and across jurisdictions.

Panellists also explored how the attitude of business towards tax has shifted in the past years, and whether the business is now only taking into account the legal part of the tax advice, or whether other considerations are increasingly relevant, such as changed attitudes of business towards tax law and tax administration. To this end, panellists discussed how the changing environment in tax policy has affected business decisions and the nature of tax advice and whether education in tax ethics can play a role going forward. References in the paper to legal obligations on tax advisers to reduce tax liabilities arising from national laws and court rulings and pressures generated by broad taxpayer attitudes were also examined by the panellists.

On the side of the European Union, MEP Paul Tang expressed his views that more needs to be done to ensure that tax advisers are prevented from providing advice that would encourage tax avoidance practices, likening the changes in tax advice behaviours to those of a rehabilitating addict. Mr Reinhard Biebel, Head of Direct Tax at the European Commission, confirmed that the Commission welcomed the discussion paper, but that issues with enforceability and unregulated advisers would remain an issue that the EU intends to further address in the future with further legislative initiatives.

The conference was well-attended and received by the audience, and the CFE discussion paper initiative will be the subject of follow-up events and further work within CFE in 2022.

Tax Inspectors Without Borders Annual Report

The OECD and United Nation's capacity building initiative, Tax Inspectors Without Borders, launched in 2015 to assist developing countries with their auditing capacity and in increasing compliance of MNEs worldwide, has published its [2021 annual report](#) providing an update on its efforts. Tax Inspectors Without Borders provides practical, hands-on assistance to developing countries in order to build capacity in the areas of international tax audit, criminal tax investigations and effective use of automatically exchanged information.

The initiative has over 100 experts working directly with tax administrations in developing countries in effectively to provide assistance in collecting tax from multinational entities, which is vital in light of the coronavirus crisis. The report indicates that in the six years since its inception, the initiative has helped collect over USD 1.4 billion in additional tax revenue for developing countries, and USD 3.9 billion in tax assessed.

European Parliament Hearings on Taxation of Cryptocurrencies & Pandora Papers

The European Parliament Subcommittee on Taxation Matters (FISC) held a public hearing on "The impact of new technologies on taxation: crypto and blockchain" on 9 November. Invited speakers included, Michelle Harding, Head of the Tax Data and Statistical Analysis Unit at the OECD's Centre for Tax Policy and Administration; Andreas Thiemann, Researcher at the Joint Research Centre of the European Commission (JRC); Alberto García Valera, Partner at EY Law and Dr Robert Müller, Postdoctoral researcher.

In addition, the Subcommittee on Tax Matters held a further public hearing on tax avoidance and evasion in the Pandora Papers on 30 November 2021. The hearing featured presentations from Mr Will Fitzgibbon, senior ICIJ reporter,

Ms Moran Harari, Director and Researcher at the Tax Justice Network Israel and Mr Benjamin Angel, Director for Direct Taxation, DG TAXUD, European Commission.

The meeting were web-streamed and more information can be found [here](#).

Global Forum 2021 Annual Report & Plenary

The European Parliament has now [adopted legislation](#) introducing public country-by-country reporting obligations for multinationals to declare the amount of tax paid in EU Member States. Under the legislation, multinationals and their subsidiaries which have an annual revenue over €750 million and are active in more than one EU country will be required to publish the following information:

- The nature of the company's activities;
- The number of full-time employees;
- The amount of profit or loss before income tax;
- The amount of accumulated and paid income tax and accumulated earnings.

If a subsidiary is deemed to exist solely for the purpose of avoiding the reporting requirements, the subsidiary will also be required to report the same tax information. The reported information will be made publicly available online in a harmonised format.

Co-rapporteur on the file for the European Parliament, Evelyn Regner, said of the adopted legislation: *“Persistence pays off. Despite all the adversity and a five-year-long blockage in the Council, we can proudly say that the call for more corporate tax transparency has been answered.. For too long, corporations have played by their own rules. Thanks to the transparency provided by public country-by-country reporting, we will now be able to shed light on this opaque corporate jungle.”*

The directive will enter into force 20 days after publication in the Official Journal. Member states will then have 18 months to transpose the law into their national laws. The disclosure requirements will accordingly enter into force in mid-2024.

European Parliament Adopts Public Country-by-Country Reporting Legislation

The Platform for Collaboration on Tax, a collaborative project of the IMF, OECD, UN and the World Bank, has issued its [2021 report](#) examining the activities undertaken by the Platform in the past year across five focus areas, including: medium-term revenue strategies, COVID-19, tax and sustainable development goals, international taxation, and co-ordination.

The report demonstrates that the Platform increased support to countries during the COVID-19 pandemic in the areas of domestic resource mobilisation, release of joint knowledge products, technical assistance concerning tax-related responses to the crisis, and workshops on critical issues. The Platform also published two toolkits on [Transfer Pricing Documentation](#) and [Tax Treaty Negotiations](#) and held a number of workshops and virtual consultations concerning these toolkits. The Platform also collaborated with the African Tax Administration Forum and the Asian Development Bank to host a series of workshops on the reform of tax systems.

As part of its future activities, the Platform aims to concentrate on identifying new priorities where its collaboration can be of most value, hold further events on the link between tax and the sustainable development goals, improve resources on the Platform's website and expand engagement with partner countries concerning the available toolkits.

EU Tax Observatory: New Report on Tax Competition

The EU Tax Observatory has now published its third [report](#) entitled "New Forms of Tax Competition in the European Union: An Empirical Investigation". The report focuses on the tax and special schemes for new tax residents, reviews the evolution of carbon prices in G20 countries between 2018 and 2021 and estimates carbon pricing resulting from carbon taxes, emissions trading systems, and fuel excise taxes. Based on empirical analysis of personal and corporate tax competition in the EU, the reports finds that tax competition increasingly takes the form of preferential or narrowly-targeted tax regimes on top of general rate cuts.

The report will be followed by a conference on EU tax competition, scheduled for 30 November. More detail, including registration possibilities, is available on the following [link](#).

Committee on Conduit Companies: Shell Companies Detrimental to the Netherlands

A Committee on Conduit Companies established in the Netherlands, tasked by the Dutch House of Representatives with investigating the activities of conduit companies, has delivered its final [report](#) concluding that shell companies are damaging to the reputation of the country and contribute little to the economy. The Committee calls for the Dutch government to:

- Ensure greater transparency surrounding conduit companies;
- Subject conduit companies to greater supervision; and
- Oblige conduit companies to increased reporting on their activities.

The Committee also calls for the creation of an international Ultimate Beneficial Owner register, to enable sharing of information about conduit companies, and notes issues with the narrow definition of "conduit company" in existing Dutch legislation. The Committee recommends factors such as real presence in the Netherlands, tax motives, substantial money flows and the existence of

international structures should be looked to as elements which would indicate the entity is a conduit company.

The Committee reported that in 2019 there were over 12,400 conduit companies holding assets worth over five times that of the Dutch economy, around 4,500 billion Euro, with only around 650 million received in tax revenue from the entities, 02.% of total tax revenue. Despite the low tax revenue generated, the Committee estimated that around 170 billion Euro flowed through the entities. The companies create somewhere between three to four thousand jobs in the Netherlands.

As part of its Corporate Tax Plan, the European Commission held a public consultation on tax avoidance and fighting the use of shell entities for tax purposes earlier in 2021. Draft EU proposals to fight the use of shell entities are expected to be published in early January 2022.

The selection of the remitted material has been prepared by:
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