BRUSSELS | **MAY 2020**

1. OECD Update on International Work Programme

The OECD held a Tax Talks Webcast in May concerning the recent and upcoming developments in the OECD's international tax work, not only in relation to the tax challenges presented by the COVID-19 crisis, but also as regards continuity on its programme of work.

In relation to progress on the work on taxation of the digital economy, a virtual meeting will be held by the Inclusive Framework in July to discuss progress made by the working groups. Pascal Saint-Amans stated that although one or two countries have requested the work of the OECD on the digital economy be delayed, the majority of other countries see an increased need to progress the work and reach a consensus in accordance with the original timeline, given further unilateral digital taxes being introduced.

It is expected that details of the key policy features will be agreed and made public in October, with the report on the final solution to be produced for the G20 by the end of the year. Good technical progress is reportedly being made in relation to both pillars, with the so-called "building blocks" being examined by the working groups presented during the discussion. However, notwithstanding the progress being made, Pascal Saint-Amans stated he does not exclude some staged process, with some aspects of the package being progressed further in 2021, given the shift in the timeline for agreement to be presented in October.

Speaking recently concerning the trade implications of any agreement at international level, Pascal Saint-Amans reportedly stated *"Interestingly, I would see the impact of COVID on trade as probably pulling some of the teeth out of the mouth of 301, the threat by the U.S. to take sanctions against countries moving unilaterally," Saint-Amans said. "We can see Indonesia, India, Nigeria, Egypt joining France, the U.K., Spain, Italy, Austria, Turkey, and I could name many others that are going to move if we don't have the solution very quickly."*

2. EU Updates List of High-Risk Third Countries

As part of the European Commission's Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing, the Commission published a Revised Methodology for identifying high risk third-countries with deficiencies in their money-laundering and counter terrorist financing regimes. It aims to improve transparency in the process by *" (i) the interaction between the EU and FATF listing process; (ii) an enhanced engagement with third countries; and (iii) reinforced consultation of Member States experts."*

In addition, the Commission has published an updated List of High-Risk Third Countries, by way of Delegated Regulation, in line with its revised methodology. The list has been submitted to the European Parliament and Council for approval, which ordinarily should occur within one month.

The Regulation proposes to add the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the List, and removes from the list Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia. Afghanistan, Iraq, Pakistan, Syria, Trinidad and Tobago, Uganda and Yemen remain on the list.

3. OECD Hosts BEPS Action 13 Consultation Webinar

A digital public consultation was held on 12 – 13 May by the OECD concerning the 2020 review of BEPS Action 13 Country-by-Country reporting, focusing on improvements to the minimum standard for high level transfer pricing risk assessment, BEPS-related risks, and analysis of various aspects concerning the reporting standards.

The public consultation was recorded and can be replayed via the OECD's website.

4. EU to Postpone Reportable Cross-Border Arrangement Deadlines

The European Commission has published proposals for Council decisions to postpone deadlines imposed by the EU Directive on Administrative Cooperation by 3 months, as well as the entry into force of the VAT E-commerce package by 6 months.

This follows on from public requests made by financial and professional association organisations, seeking leniency in the enforcement of penalties and deadlines contained within the Directive due to the extraordinary consequences of the COVID-19 outbreak which have resulted in severe disruption across the European economy.

As concerns the Directive on Administrative Cooperation, the proposal would:

- Defer the time limit for exchanges of information on Reportable Financial Accounts by 3 months, i.e. until 31 December 2020;

- Change the date for the first exchange of information on reportable cross-border arrangements that feature in Annex IV to Council Directive 2011/16/EU from 31 October 2020 to 31 January 2021;
- Change the date for the beginning of the period of 30 days for reporting cross-border arrangements which are included in Hallmarks listed in Annex IV to Council Directive 2018/822/EU from 1 July 2020 to 1 October 2020;
- Change the date for the reporting of the 'historical' cross-border arrangements (i.e. arrangements that became reportable from 25 June 2018 to 30 June 2020) from 31 August 2020 to 30 November 2020.

The Commission has also included in the proposal concerning the Directive on Administrative Cooperation the possibility of extending the reporting deadlines for a further 3 months, depending on the continued evolution of the coronavirus impact on the EU.

As concerns the VAT e-commerce package, the proposals would *"only concern the date of application of the already adopted legal framework of the VAT e-commerce package set out in the VAT Directive. The date of application shall be postponed by six months. This means that the rules shall be applied as of 1 July 2021 instead of 1 January 2021. Consequently, Member States shall adopt and publish their transposition measures by 30 June 2021 instead of 31 December 2020."*

The proposals will be considered by the Council as a matter of priority.

5. Countries Agree on COVID-19 Taxation of Cross-Border Workers

In recent weeks, various countries have agreed on the taxation of cross-border workers during the COVID-19 outbreak period. This follows after OECD guidance was published analysing tax treaty implications concerning certain tax issues raised by the circumstances surrounding the COVID-19 outbreak, such as potential creation of a permanent establishment or change in the place of effective management on the basis of a cross-border employee carrying out duties remotely, as well as other issues concerning cross-border workers and changes in the residence status of workers.

Agreements have been concluded between Belgium and the Netherlands, the Netherlands and Germany and Germany and Belgium, with countries generally agreeing that days worked at home due to COVID-measures would count as days worked in the contracting state. Some agreements deal with more specific cases versus a general agreement. Further agreements are expected to be concluded in the coming weeks.

6. Commission Expands Temporary State Aid Framework

The European Commission has expanded the Temporary State Aid Framework adopted in March to assist Member States in dealing with the economic impact of the COVID-19 outbreak. To minimise the economic impact of the COVID-19 outbreak, the Framework allows Member States to provide aid by: providing grants, selective tax advantages, and advance payments of up to 800,000 Euro; providing State guarantees for loans taken by businesses; subsidising public loans to companies, putting in place safeguards for banks providing State aid to the economy; and providing short-term export credit insurance.

The Commission has now expanded the Framework to include criteria for Member States to apply when providing recapitalisation and subordinated debt to companies, to protect the EU level playing field.

Concerning the expanded Framework, Executive Vice-President Margrethe Vestager stated "i*f Member States decide to step in, we will apply today's rules to ensure that taxpayers are sufficiently remunerated and their support comes with strings attached, including a ban on dividends, bonus payments as well as further measures to limit distortions of competition. And for public transparency, large companies also have to report on the use of aid received and compliance with their responsibilities linked to the green and digital transitions. Because we have to uphold European values and the need for a level playing field to be able to bounce back strongly from this crisis."*

Full details concerning the measures can be found here.

7. UK Publishes Post-Brexit Global Tariff Plan

The UK's revenue authority, HM Revenue & Customs, has published details of the UK tariff, or so-called UK Global Tariff, which will apply on the importation of goods into the UK from 1 January 2021. The UK Global Tariff will replace the EU Common External Tariff.

The new Global Tariff will apply to all imported goods, except where: there is a trade agreement between the UK and country from which the goods are being imported, an exemption or some sort of relief applies, or the goods come from a country which forms part of the Generalised Scheme of Preferences.

The Global Tariff does not include VAT or any other import duties that may be payable, nor does it take into account anti-dumping or other sorts of restrictions that may apply.

8. EU Tax Package Delayed Until July 2020

EU Commission proposals previously anticipated to be published on 10 June of this year are now set to be released on 15 July. An indicative planning document details that the Commission's Anti-Fraud Package and Customs Union Package are expected to be published in mid-July, though the agenda notes that this is yet to be confirmed.

The Anti-Fraud Package will be comprised of:

- Communication on an 'Action Plan to fight tax evasion and to make taxation simple and easy';
- Communication on 'Tax good governance in the EU and beyond', encompassing the external action strategy towards third countries, and possible, some intra-EU aspects;
- Revision of the Directive on automatic exchange of information – DAC7, which concerns reporting on income derived from online platforms (both direct and indirect tax aspects), which coincides with work undertaken by OECD's Working Party 9 and 10 on voluntary model rules for reporting of online platform activities.

The Customs Union Package will be comprised of an Action Plan on the Customs Union and a legislative proposal on the Customs Single Window.

9. EU Confirms Enlargement with Western Balkans at Zagreb Summit

At the EU-Western Zagreb Balkans Summit, a highlight of the Croatian EU Presidency unfortunately forced to be held virtually in light of the Coronavirus outbreak, the EU affirmed its commitment to a European vision for the Western Balkans.

President Ursula von der Leyen, speaking at the press conference following the Summit stated *"This Summit, even if it is virtual, is a testimony of the importance the European Union gives to the region. And it is a testimony that the Western Balkans are an absolute priority for the European Union and for my Commission. The Western Balkans belong in the EU. There is no question for us about this. And this is why I firmly believe that the European Union has a special responsibility in assisting its partners in the region."*

During the Summit, the Zagreb Declaration was concluded, under which the EU Member states have promised a 3 Billion Euros package to the Western Balkans to support the post-coronavirus crisis recovery of the region, conditioned with a commitment by the Western Balkans governments to uphold European values and principles and carry out necessary legal and socio-economic reforms to meet those values.

10. Czech Republic, Indonesia & Korea Ratify OECD MLI

The Czech Republic, Indonesia and Korea have deposited instrument of ratification to the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

The multilateral tax treaty allows jurisdictions to update their existing double tax treaties and transpose measures agreed in the BEPS project without further need for bilateral negotiations. It now extends to over 1,650 bilateral tax treaties. There are now 94 jurisdictions covered by the Convention, with 45 countries having ratified, approved or accepted the MLI.

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The selection of the remitted material has been prepared by
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia