BRUSSELS I **NOVEMBER 2019**

1. Public Consultations on OECD Two-Pillar Approach for Taxation of Digitalising Economy

In November, the OECD held a public consultation in Paris on its proposals for taxation of the digitalising economy on the basis of the 'unified approach' under Pillar One. Under the proposed approach, new taxation rights for market jurisdictions are recognised as a matter of novelty. The new rules are intended to apply to companies that derive value from consumer-interaction with users in market jurisdictions. Under the new profit allocation rules, a share of the deemed residual profits of the 'consumer-facing' multinational companies will be reallocated to market jurisdictions, through formulary apportionment and use of proxies such as sales.

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration confirmed that the work at government representative level is ongoing, with the Secretariat proposal serving as a blueprint for further negotiations. The next Inclusive Framework meeting is scheduled for January 2020.

Representatives from the OECD, the BEPS Inclusive Framework, academics, tax practitioners and advisers and representatives of businesses addressed substantive issues arising from the Unified Approach proposal, in particular scope and nexus, computation of Amount A, elimination of double taxation in relation to Amount A, fixed remunerations under Amount B as well as dispute prevention and resolution. There was an emerging consensus that the new challenges arising from digitalisation were conducive to a shift toward formulary apportionment, however, discussions could not agree on the precise principles underpinning such a shift. In addition, there was some criticism from the floor on the lack of clear principles justifying the departure from the arm's length principle; that the absence of a coherent rationale might potentially undermine the goal to achieve fairness with the new profit allocation rules.

Generally, participants sought clarity on definitions such as residual profits, businesses within scope of the proposal, the viability of the proposed coexistence of the two systems (existing tax rules under Amount B and C vs. new nexus and taxing rights under Amount A), as well as guarantees for robust and effective dispute prevention and resolution mechanisms. Representatives of business models which traditionally do not derive meaningful value from user interaction ('consumer-facing') sought to be carved out of the new rules. On the administration-side, opportunities for simplification of the rules were also discussed, with suggestions for a central coordinating jurisdiction or one-stop-shop to audit Amount A, such that the parent entity would file a return on behalf of the group entities, informing other jurisdictions of about the portion they would be entitled under Amount A, with a possibility for a single jurisdiction to collect and remit the tax due for the other jurisdictions involved.

CFE issued an Opinion Statement responding to the consultation highlighting a number of key elements that should be embedded as part of this process, calling for more clarity and early consensus at political level, and emphasised the significance of departing from well-established principles of international tax law.

The OECD on 8 November published a further public consultation document concerning Pillar Two of its two-pillar approach to addressing the taxation challenges of the digitalising economy, the so-called “Global Anti-Base Erosion Proposal”, or “GloBE” proposal, which seeks to address outstanding BEPS issues by introducing a global minimum tax and providing *“jurisdictions with a right to "tax back" where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation”.* The approach would seek to apply an income inclusion rule and deduction denial in tandem to achieve the intended aim of global anti-base erosion.

Interested parties will be able to submit comments until 2 December 2019 by e-mail to taxpublicconsultation@oecd.org via Word format. Following the written consultation process, a further public consultation meeting will be held on 9 December in Paris.

2. Tax Dispute Resolution: OECD Invites Input on 10th Batch of BEPS Action 14 Peer Reviews

In the framework of the BEPS Action Plan, and steps undertaken under BEPS Action 14 concerning the improvement of tax dispute resolution mechanisms, the OECD has now invited input concerning the 10th round of peer reviews, in order to assess the efforts by countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project.

Input is requested in relation to the jurisdictions of: Aruba, Bahrain, Barbados, Gibraltar, Greenland, Kazakhstan, Oman, Qatar, Saint Kitts and Nevis, Thailand, Trinidad and Tobago, the United Arab Emirates and Vietnam. BEPS Action 14 seeks to improve the tax-dispute resolution mechanisms via the Inclusive Framework peer-review process.

Interested parties are requested to submit completed responses to the Peer Review questionnaire via e-mail to fta.map@oecd.org in Word format by 16 December.

3. Italia Africa Business Week – 26 & 27 November 2019

The Italian Ministry of Foreign Affairs and International Cooperation was the co-patron of the third annual Italia-Africa Business Week Conference, this year held in Milan on 26 and 27 November 2019.

The conference aims to facilitate entrepreneurial trade, financial partnerships and cooperative agreements between Italy and Africa. Attendees from international financial institutions, ministerial departments, capital investment firms and entrepreneurial experts attended the conference.

Piergiorgio Valente, President of CFE Tax Advisers Europe, participated in a panel which explored issues concerning customs and trade between Africa and Italy, together with the Ambassador of Mali in Italy, President of the Chamber of Commerce Italia-Mozambique and the General Delegate of Cepex.

4. EU Council Updates Non-Cooperative Tax Jurisdictions List

In the context of the EU evaluation of tax good governance standards by third countries and the list of non-cooperative jurisdictions for tax purposes, the Code of Conduct Group (Business Taxation) in November carried out an evaluation of tax good governance standards by third countries. Thereafter, the ECOFIN Council on 8 November approved the changes recommended by the Code of Conduct Group to the list of non-cooperative jurisdictions for tax purposes.

The Council accordingly endorsed the removal of Belize from the blacklist to the grey list, after establishing that it had implemented reforms to comply with EU tax good governance standards. It will be removed from the Annex II grey list in the future, subject to implementation of further changes concerning its foreign source income exemption regime. On the basis that North Macedonia has fulfilled the tax good governance criteria set out by the EU, the ECOFIN Council also approved the recommendation that it be removed entirely from the Annex II jurisdictions list.

Additionally, as a result of Jordan joining the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Inclusive Framework on BEPS on 29 October, it has now fulfilled the tax good governance criteria set out by the EU and as a result the Code of Conduct Group recommended Jordan be removed from Sections 1.2 and 3.1 of Annex II of the Blacklist. The General Secretariat of the Council of the EU recommends in a note to the EU Member states that these changes be approved at the next ECOFIN Council.

Eight jurisdictions now remain on the EU blacklist: American Samoa, Fiji, Guam, Oman, Samoa, Trinidad and Tobago, the US Virgin Islands and Vanuatu.

5. OECD Releases Further Country-by-Country Reporting Implementation Guidance

As a follow-up of BEPS Action 13, the OECD /G20 Inclusive Framework on BEPS has released updated guidance on the implementation and operation of Country-by-Country Reporting (CbCR). The new guidance includes the treatment of dividends, the operation of local filing, the use of rounded amounts in Table 1 of an MNE Group's CbC report and the information that must be provided with respect to the sources of data used.

6. Platform for Collaboration on Tax Consultation on Draft Transfer Pricing Toolkit

In November, the Platform for Collaboration on Tax, a joint initiative of the IMF, OECD, UN and World Bank Group, held a public consultation a draft toolkit designed to help developing countries in the implementation of effective transfer pricing documentation requirements. The toolkit considers current approaches of tax administrations concerning documentation for transfer pricing analysis and policy matters that may give guidance to developing countries.

GTAP welcomed the draft toolkit, and set out its view that the toolkit has significant potential impact in terms of developing uniformity in practice across jurisdictions. GTAP's responses to the consultation questions were based on responses compiled by fellow founding GTAP member, the West African Union of Tax Institutes and its member organisation, the Chartered Institute of Taxation of Nigeria (CITN).

7. Czech Government Approves Digital Tax Plan

The Czech Republic's government has approved plans to introduce a digital services tax to apply to businesses making revenue from Czech users' data, in particular targeting advertising, social media platforms, online marketplaces and user data sales.

The proposed tax would impose a 7% digital services tax on domestic digital sales for companies with a global turnover above 750 million Euros, and a national turnover above 100 million Czech koruna.

8. Regional OECD Consultation Meeting on Taxation of the Digital Economy in Manila

From 19 to 20 November a regional OECD consultation meeting was held for Asian and Pacific countries at the Asian Development Bank Headquarters in Manila concerning the OECD's Inclusive Framework's work on taxation of the digitalising economy and the reallocation of taxing rights and minimum corporate income taxation.

Consultation sessions were held for government, civil society and business and ABD member countries, with officials from government finance ministries, revenue authorities, technical experts and policy makers in attendance. A separate meeting was also held which focused on capacity building issues in developing countries in the Pacific Region.

9. Japan and Peru Sign New Tax Treaty

On 18 November, Japan and Peru signed a tax treaty which sets out as its principle purpose the aim of preventing treaty shopping and tax evasion. The treaty sets the taxation rate for withholding taxes on dividends at 10 percent, and at 15 percent on royalties.

The treaty also provides for a mutual agreement procedure, ensuring taxpayers have a mechanism for resolving tax disputes between the jurisdictions. The new agreement will enter into force once ratified by the countries.

10. OECD Publishes New Africa Revenue Statistics

In November, the OECD published the Revenue Statistics in Africa report, providing an analysis of tax revenue and statistics concerning 26 countries in Africa, namely: Botswana, Burkina Faso, Cabo Verde, Cameroon, Republic of the Congo, Democratic Republic of the Congo, Côte d'Ivoire, Egypt, Equatorial Guinea, Eswatini, Ghana, Kenya, Madagascar, Mali, Mauritania, Mauritius, Morocco, Niger, Nigeria, Rwanda, Senegal, Seychelles, South Africa, Togo, Tunisia and Uganda.

The report shows that the countries create over 75% of the GDP in Africa, with tax to GDP ratios varying widely between the subject countries from 5.7% to 31.5%. Tax revenues were shown to plateau from 2017, whilst non-taxation revenue declined. Whilst personal income taxation and social security contribution levels remain low on average in the countries, revenue collected from taxes on goods and services and personal income tax has increased over the past 10 years.

Further information on the key findings of the report can be viewed here.

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