



**BRUSSELS | 14 OCTOBER 2024**

## **ECOFIN: Council of the EU Updates List of Non-Cooperative Jurisdictions for Tax Purposes**

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Economic and Finance Ministers [updated](#) the list of non-cooperative tax jurisdictions at the EU Council ECOFIN meeting held last week. The EU Council removed Antigua and Barbuda from the so-called Blacklist, leaving 11 jurisdictions on the list, namely: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, the US Virgin Islands, and Vanuatu.

Antigua and Barbuda was added to the list in October 2023 after an unfavourable OECD Global Forum review on exchange of information. However, recent legal reforms led to a supplementary review. Notably, Fiji and Palau have made progress toward compliance with EU listing criteria. Meanwhile, the Council approved its regular "state of play" document (Annex II), which tracks cooperation with jurisdictions working toward tax reform. Armenia and Malaysia have fulfilled commitments and will be removed from the state of play, while Vietnam has been granted additional time to meet country-by-country reporting standards, with reassessment set for February 2025.

In response to the removal of Antigua and Barbuda, Pasquale Tridico (GUE, IT), new Chair of the FISC Subcommittee on Tax Matters [expressed concern](#) over the decision in a press release, stating that delisting should occur only after tax reforms are fully implemented, not merely based on commitments. He also criticised past removals of jurisdictions like the Cayman Islands and Bermuda for accepting minimal compliance measures. Tridico called for enhanced listing criteria, a stronger role for the European Parliament to ensure transparency, and efforts to address tax havens within the EU itself.

## **FISC Subcommittee to Hold Exchange of Views with Vestager on Apple State Aid Case**

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The EU Parliament's Subcommittee on Tax Matters will hold an [exchange of views](#) with Margrethe Vestager, Executive Vice-President of the European Commission, overseeing Europe's Digital Age strategy and competition policy. The session will take place from 10:30 to 11:30am on 16 October, and will centre around the recent ruling by the Court of Justice of the European Union (CJEU) on the Apple State aid case in Ireland.

The CJEU's decision, delivered on 10 September 2024, upheld the European Commission's 2016 ruling that Ireland provided Apple with illegal State aid through €13 billion in tax breaks, concluding a decade-long dispute. The CJEU 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.

The implications of this ruling will be explored during the exchange of views, in the context of combating aggressive tax planning and ensuring equitable taxation for all businesses.

## **EU Council Approves EU Position on UN Framework Convention on Tax Cooperation**

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At the ECOFIN meeting last week, the EU Council [approved](#) the EU's position regarding the draft terms for a UN Framework Convention on international tax cooperation, prepared prior to the 79th session of the UN General Assembly held in September. While supporting the initiative, the EU and its Member States raised key concerns. They advocate for a consensus-based decision-making process, emphasising that this approach is essential for the inclusivity and effectiveness of the Framework Convention.

The EU also stressed the need for high-level commitments within the Convention, ensuring taxpayers' rights and safeguards are adequately addressed. Additionally, the EU seeks further analysis on substantive areas for future protocols to ensure stability in the international tax architecture.

Another critical point for the EU is ensuring the Convention complements ongoing efforts in other international tax forums, advocating for coherence and alignment to promote widespread participation and implementation.

The EU calls for transparency and a balanced process to ensure the Framework Convention reflects the interests of all UN member states, and foster greater collaboration, global acceptance, and long-term success in strengthening international tax cooperation.

If adopted, the terms of reference provide for the framework convention on a new tax treaty to be developed by 2027. The UN treaty would need to be adopted by the General Assembly, after which it would be opened for signature and ratification to all member states.

## **EU Parliament Public Hearing on Tax Simplification & Transparency**

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On 17 October 2024, from 9:00 to 10:30am, the EU Parliament will hold a [public hearing](#) on "Simplification and Transparency: The Role of Simplified Tax Policy in Encouraging Growth, Job Creation, Competitiveness, and Cross-Border Business in the EU."

The discussion comes in response to growing concerns about compliance costs and administrative burdens. Recent reports by Enrico Letta and Mario Draghi have renewed the debate on boosting the EU's competitiveness post-COVID and amid the economic impact of the war in Ukraine.

Speakers at the FISC hearing include: Prof. Dr. Eva Eberhartinger, Full Professor and Chair in Business Taxation (Betriebswirtschaftliche Steuerlehre) at the Department of Finance, Accounting, and Statistics at WU, Vienna University of Economics and Business; Prof. Dr. Christiana HJI Panayi, Professor in Tax Law at Queen Mary University of London; and, Dr Panayiotis Nicolaidis, Director of Research at EU Tax Observatory Paris School of Economics.

The hearing will explore how simplifying tax compliance and reducing administrative costs for both taxpayers and governments can foster cross-border business, enhance competitiveness, and drive job creation and economic growth across the EU.

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

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CFE Tax Advisers Europe's ECJ TaskForce has 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.

The 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 its judgment in this case and its previous case law in future decisions.

The CFE ECJ Task Force is formed by CFE Tax Advisers Europe and its members are Georg Kofler (Chair of this Task Force and Professor at the Institute for Austrian and International Tax Law of WU Wien), Alfredo Garcia Prats (Professor at the University of Valencia), Werner Haslehner (Professor at the University of Luxembourg), Aleksandar Ivanovski (Director of Tax Policy at CFE Tax Advisers Europe, *ad hoc* member in 2024), Eric Kemmeren (Professor of International Taxation and International Tax Law at the Fiscal Institute Tilburg of Tilburg University), Michael Lang (Professor at the Institute for Austrian and International Tax Law of WU Wien), João Nogueira (Professor at Universidade Católica Portuguesa and Deputy Academic Chairman at IBFD), Christiana HJI Panayi (Professor at Queen Mary University of London), Stella Raventós-Calvo (Vice-President of CFE Tax Advisers Europe), Isabelle Richelle (Co-Chair of the Tax Institute - HEC - University of Liège, Brussels Bar Elegis), and Alexander Rust (Professor at the Institute for Austrian and International Tax Law of WU Wien).

We invite you to read the [Opinion Statement](#) and remain available for any queries you may have.

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