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EU Commission Opens First Investigation on Foreign Subsidies Under New Regime

The European Commission opened the first investigation against a foreign company on the basis of the new State aid regulatory framework for non-EU countries, the Foreign Subsidies Regulation (FSR, or the Regulation), [Regulation \(EU\) 2022/2560](#).

The FSR entered into force on 12 July 2023 with the obligation to notify certain concentrations from 12 October 2023. Under the FSR, the European Commission can investigate foreign market interventions which provide state aid/subsidies which are not considered compatible with the level-playing field of EU's Single Market, after a balancing test of EU's policy objectives. The first case concerns a Chinese state-owned train manufacturer, following a notification to the Commission.

The European Commission published a [policy brief](#) setting out the preliminary findings and observations of the new regulatory regime in the first 100 days of its application. The policy brief notes that the Commission in the first 100 days has assessed the source of financing of the notified transactions which included capital injections, equity contributions and loans obtained from financial institutions attributable to a non-EU jurisdiction. Other forms of foreign financial contribution observed by the Commission include state guarantees, direct grants

for specific projects, as well as tax benefits, notably for R&D expenses and investment projects.

According to the Regulation, where a foreign subsidy is liable to improve the competitive position of an undertaking in Single Market and where, in doing so, that foreign subsidy actually or potentially negatively affects competition in the internal market, it shall be deemed to be distortive.

As such, certain tax benefits, i.e. the foregoing of revenue that is otherwise due, such as tax exemptions or the granting of special or exclusive rights without adequate remuneration shall be considered a foreign financial contribution. In terms of clarifying which tax benefits are subject to notification, the Commission has clarified that exemptions granted by non-EU countries from ordinary tax regimes (e.g. profit-based taxes, property taxes, stamp duties etc.) constitute “foreign financial contributions” and should be counted for determining whether the notification threshold is met.

However, as indicated in the Commission Implementing Regulation, the following tax measures do not need to be reported in the notification, unless they fall into any of the categories of foreign subsidies most likely to distort the internal market, which are listed in Article 5 of Regulation (EU) 2022/2560:

- i. deferrals of payment of taxes, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application;
2. application of tax reliefs for avoidance of double taxation in line with the provisions of bilateral or multilateral agreements for avoidance of double taxation; as well as
3. unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic and conditions as the provisions of bilateral or multilateral agreements.

The list of tax measures which are exempt from notification to the Commission is exhaustive, which means that other or similar tax measures cannot benefit from the exception. Tax measures not listed should be reported regardless of whether the notifying parties consider them to be of general application, and consult the case-teams at the European Commission/ DG COMP.

The Commission may, based on a case-by-case assessment, require additional information on those transactions at any stage of the assessment. Further exceptions to these rules include provision or purchase of goods and services at market terms in the ordinary course of business, de minimis transactions below EUR 1 million, certain tax and social security reductions of general application and some tax reliefs for the avoidance of double taxation.

EU Council Updates List of Non-Cooperative Jurisdictions for Tax Purposes

Finance Ministers sitting at the Council of the EU updated the so-called “[Blacklist](#)”, the EU List of Non-Cooperative Jurisdictions for Tax Purposes. At the meeting, held on 20 February, the jurisdictions of Bahamas, Belize, Seychelles and Turks and Caicos Island were removed from the list.

The Code of Conduct Group updated its recommendations concerning the Bahamas and Turks and Caicos Islands, following on from the OECD's Forum of Harmful Tax Practices updating its assessment in relation to enforcement of economic substance requirements. Similarly, Belize and Seychelles have been removed to Annex II State of Play of the List pending the outcome of the OECD Global Forum's supplementary reviews on exchange of information on request.

Additionally, in the State of Play Annex II, the Council approved changes to remove Albania, Aruba, Botswana, Dominica, Hong Kong and Israel from the Annex II, for having fulfilled various commitments or updated ratings of the Global Forum.

The following 12 jurisdictions remain on the list:

- American Samoa
- Anguilla
- Antigua and Barbuda
- Fiji
- Guam
- Palau
- Panama
- Russia
- Samoa
- Trinidad and Tobago
- US Virgin Islands
- Vanuatu

Frankfurt to Host new EU AML Authority Body

On 22 February, Frankfurt was [selected](#) by the EU Parliament and EU Council as the host city for the new EU Anti-Money Laundering body, the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA). The European Parliament and Council held a [public hearing](#) on 30 January on candidacy applications submitted by Member States to hold AMLA's seat. [Applications](#) were heard concerning the proposals of: Rome, Vienna, Vilnius, Riga, Frankfurt, Dublin, Madrid, Brussels and Paris. The hearing can be replayed [here](#).

EU Parliament co-rapporteurs Emil Radey and Eva Maria Poptcheva commented on the vote appointing Frankfurt, saying: *“AMLA will be a game-changer in cracking down on dirty money in the EU. It will supervise the riskiest financial entities, oversee the non-financial sector, and play a crucial role in stopping evaders from circumventing targeted financial sanctions. Now that Parliament has an equal say in choosing the agency’s seat, we have made the*

process more transparent with joint public hearings, and introduced specific selection criteria to ensure that the location enables the Authority to fully execute its tasks and powers. Congratulations to the winner, Frankfurt!”

The Council of the European Union and the European Parliament reached a [provisional agreement](#) on the reform of EU’s anti-money laundering legislation in January 2024. With the new package, all rules applying to the private sector will be transferred to a regulation, while the directive will deal with the organisation of institutional AML/CFT systems at national level in the member states. A Regulation is a piece of EU legislation that is directly effective in all EU Member states and does not require further legislative action. The legislative package as provisionally agreed between Parliament and Council is expected to be voted for final approval at Parliament at the 22-25 April Plenary Session.

It was the first occasion that a public hearing has been required in the process to determine the seat of an EU agency, and follows from the decision of the [EU Court of Justice](#) which held that the competence to determine the location of the seat lies with the EU legislature.

The AML Authority will begin operations under the Regulation from July 2025. Over 400 people will be employed to work for the new EU Authority body.

[Registrations Open: CFE Forum | Sharing the Tax Pie | 18 April 2024 | Brussels](#)

CFE Tax Advisers Europe will hold its 2024 Forum on 18 April 2024 in Brussels on the topic of *“Sharing the Tax Pie: Revisiting the Role of the UN, EU & OECD in Tax Policy; and Taxable Presence Threshold (Fixed Establishment) in Indirect Taxation”*.

CFE’s 2024 Forum will bring two excellent panels of speakers to discuss the allocation of tax base (Pillar 1 and the role of the UN, the EU and the OECD in international tax matters). Secondary taxation rights, in particular the subject to

tax rule (STR) in the UN Model Tax Convention and OECD's Pillars bring up issues of divergent aspirations in tax policy between jurisdictions.

Further details concerning the panels, speakers and registration is available [here](#).

OECD Tax & Development Days

The OECD is holding the 2024 edition of its [Tax & Development Days](#) on 12 and 13 March 2024, virtually via Zoom, to provide an update on the OECD's tax capacity and policy initiatives in developing countries. Members of the OECD Inclusive Framework and key stakeholders are invited to participate, with sessions open to public.

Topics to be discussed across the two days include: developing countries perspectives on the Two-Pillar Solution; COVID-19 impact on revenues; taxation and inequality, transfer pricing and international taxation capacity; realities of carbon pricing; tax morale; tax transparency and co-operation; tax crime; Tax Inspectors Without Borders; VAT on e-commerce in developing countries, and more.

Further information and registration can be located [here](#).

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