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Rentrée 2023: Anticipated EU Tax Developments in 2023

To mark the 2023 rentrée, Director-General for Taxation and Customs Union at the European Commission, Gerassimos Thomas, issued a newsletter setting out some of the more notable EU tax policy developments to track this year.

The newsletter sets out the following files to watch in 2023:

- In March 2023, the Commission will table a proposal for reform of the EU Customs Union seeking to strengthen its integrity by more effectively enforcing EU rules and standards at external border for goods;
- The much-anticipated BEFIT proposal will be unveiled, with a view to reducing remaining obstacles for cross-border investment in the Single Market as part of a broader effort to accompany the EU's economy through the twin digital and green transition and reforming and simplifying business taxation within the EU;
- A proposal seeking to implement the Pillar 1 global tax deal into EU law will be introduced once sufficient progress has been made at international level;
- A legislative initiative to clamp down on enablers of tax abuse will be introduced;
- A proposal to improve withholding tax relief procedures for cross-border businesses in the EU will be introduced.

Other proposals under negotiation at Council level to watch in 2023 include:

- VAT in the Digital Age proposals - seeking to align VAT rules with the digital economy and simplify VAT registration and e-invoicing throughout the EU;
- DAC8 proposal - seeking to increase reporting and transparency requirements for crypto-assets and transactions;
- Unshell proposal - seeking to reduce the use of shell companies in the EU.

In the newsletter, Mr Gerassimos notes that the Pillar 2 Directive on minimum effective tax rates in the EU was agreed in late December. Member states have until the end of 2023 to transpose the Directive into national legislation. Gerassimos in the newsletter states that the directive *"will undoubtedly have a lasting effect on base erosion and profit shifting, and enhance the fairness of taxation globally".*

In relation to the Carbon Border Adjustment Mechanism (CBAM), also agreed in late December, Gerassimos said that *"CBAM is the first of its kind in the world. It will put a fair price on the carbon emitted during the production of carbon intensive goods that are entering the EU, and thereby reduce the risk of carbon leakage while encouraging cleaner industrial production in non-EU countries."*

Also of note for 2023, EU Member states by the end of June must implement Directive 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, better known as Public Country-by-Country Reporting.

OECD Appoints New Director of Centre for Tax Policy & Administration

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The OECD has appointed Ms. Manal Corwin as the new Director of its Centre for Tax Policy and Administration, taking over the role from Pascal Saint-Amans, who served as Director for 12 years.Manal Corwin is presently the Partner-in-charge of the National Tax Office and Lead Director of the Board of Directors for KPMG, LLP in the United States and previously worked in the Office of Tax Policy in the US Department of Treasury as Deputy Assistant Secretary for International Tax Affairs, working on Base Erosion and Profit Shifting initiative and headed up the US delegation for various tax treaty negotiations. As delegate to the OECD Committee on Fiscal Affairs, Ms Corwin also participated on the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, the Forum on Harmful Tax Practices, the Report on the Transfer Pricing Aspects of Business Restructurings, and the launch of the work to address aggressive tax planning.

Ms Corwin will take up her duties from 1 April 2023, relieving Grace Perez-Navarro, who served in the role on an interim basis after Pascal Saint-Amans' departure and who will retire at the end of March 2023.

EU Adopts Minimum Tax Directive

The European Union formally adopted the directive on minimum taxation of multinational groups, after Poland granted its consent in the formal written procedure on 15 December and Hungary agreed to support the Commission proposal on 12 December, under auspices of the Czech Presidency of the EU.

As such, the adoption makes the European Union a leader in the international adoption of the OECD/ G20 agreed Pillar Two, which aims to introduce 15% minimum taxation for international groups via complex mechanisms of international tax law. On adoption, EU ministers reaffirmed the commitment to the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy and invited all members of the OECD/G20 Inclusive Framework on BEPS to live up to their commitment on both pillars.

The Czech Finance Minister, Zbyněk Stanjura, currently chairing the Council said: "*I am very pleased to announce that we agreed to adopt the directive on the Pillar 2 proposal today. Our message is clear: The largest groups of corporations,* *multinational or domestic, will need to pay a corporate tax that cannot be lower than 15%, globally*."

The European Commission also welcomed the Council adoption, calling it a win for fairness and a win for diplomacy.

Member states must implement the Directive by 31 December 2023. It will apply to NMEs and domestic groups with a combined financial revenue of over 750 million Euro per year.

ECJ: *Airbnb Ireland & Airbnb Payments UK* - Case C-83/21

The ECJ issued its decision in Case C-83/21 *Airbnb Ireland & Airbnb Payments UK* in late December. The Court was asked to decide whether Italian legislation requiring the platform to collect a 21% flat-rate withholding tax from users as well as information used to compile "a special database of accommodation and buildings intended for short-term rental located in the national territory" was in line with EU rules, including whether imposing tax measures on property intermediation services providers to collect and transmit information to the Member State were within the terms of "technical regulation" and "rules of services" in Directive 2015/1535, and whether the requirement to collect these measures contravened the freedom to provide services as set out in Article 56 of the TFEU.

In its decision, the Court held that:

1. Article 56 TFEU must be interpreted as meaning that:

- *first, as regards rentals of a maximum duration of 30 days in respect of immovable property situated in the territory of a Member State, it does not preclude legislation of that Member State requiring providers of property intermediation services – irrespective of their place of establishment and the manner in which they intervene – to collect and then transmit to the national tax authority the data relating to the rental contracts concluded following their intermediation, and, where those service providers have* *received the corresponding rents or consideration or intervened in their collection, to withhold at source the amount of tax due on the sums paid by the lessees to the lessors and to pay it to the Treasury of that Member State;*

- *second, as regards rentals of a maximum duration of 30 days in respect of immovable property situated in the territory of a Member State, it precludes legislation of that Member State requiring providers of property intermediation services, where those providers have received the corresponding rents or consideration or have intervened in their collection and where they reside or are established in the territory of a Member State other than the State of taxation, to appoint a tax representative which resides or is established in the territory of the Member State of taxation.*

2. Article 267 TFEU must be interpreted as meaning that, where a question concerning the interpretation of EU law is raised by one of the parties to the main proceedings, the determination and formulation of the questions to be referred to the Court is a matter for the national court alone and those parties may not impose or alter their wording.

The full decision can be accessed here.

OECD Webinar on the Economic Impact of the Two-Pillar Solution: 18 January 2023

The OECD will hold a webinar on 18 January from 15:00 to 16:30 CET, providing an update on the economic impact assessment of the Two-Pillar Solution.

During the webinar, the OECD will discuss new estimates on the revenue impacts of implementing Pillar One and Two. The new economic impact analysis will be published on 18 January 2023 at the commencement of the webinar, on the event page for the webinar. The analysis is based on updated data and recently agreed design features of the two-pillar solution which was not accounted for in previous studies/analysis.

The webinar will be recorded and will be able to be viewed on the event page. Registration is possible here.

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