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EU Adopts Revised Code of Conduct on Business Taxation

The EU Finance ministers approved last week the revised Code of Conduct on Business Taxation, setting out stricter criteria for evaluation of harmful tax regimes. The revised code of conduct introduces scrutiny on 'tax features of general application', thus expanding the existing focus on 'preferential measures'.

Per the revised rules, when assessing whether a tax feature of general application of a Member State is harmful, the evaluation will focus on tax features of general application which are not accompanied by appropriate anti-abuse provisions, and which lead to double non-taxation or allow the double or multiple use of tax benefits in relation to the same expense, income or transactions. The Code also introduces scrutiny on the tax measures of general application of the tax system that affect the location of business activity in the European Union.

Some of the tax measures covered by the Code will fall within the scope of the provisions on State aid (Articles 107 - 109 TFEU). Given that application of primary Union law takes precedence, in cases where the Commission has initiated state aid proceedings, the Code of Conduct Group shall suspend its examination of the tax measures until the end of that state aid procedure.

Commenting, the Czech Finance Minister and Chair of ECOFIN, said: *"We confirmed today our commitment to a fairer tax environment in the EU by reinforcing the rules we apply when tackling harmful tax practices in an evolving economy. Our experts in taxation constantly look out for harmful tax practices. Since starting its work in 1997, the code of conduct group succeeded in eliminating around 140 harmful tax practices within the EU. The code of conduct of business taxation has not been amended since 1997 and today´s agreement further improves its effectiveness also in the light of the recent international tax reform",* said Zbyněk Stanjura, Minister of Finance of the Czech Republic, currently presiding with the Council.

ECJ Delivers Judgment in Fiscal State Aid Case *Fiat Finance*

The Grand Chamber of the Court of Justice of the European Union annulled the General Court judgment in the joined C-885/19 *P* | *Fiat Chrysler Finance Europe v Commission* and C-898/19 *P* | *Ireland v Commission*, concerning State aid in a form of preferential taxation allegedly granted by Luxembourg to Fiat Finance.

According to the Court of Justice, the General Court committed an error of law in the application of Article 107(1) TFEU by failing to take account of the requirement arising from the case-law, according to which, in order to determine whether a tax measure has conferred a selective advantage on an undertaking, it is for the Commission to carry out a comparison with the tax system normally applicable in the Member State concerned, following an objective examination of the content, interaction and concrete effects of the rules applicable under the national law of that State. The General Court was wrong to endorse the approach consisting in applying an arm's length principle different from that defined by Luxembourg law, confining itself to identifying the abstract expression of that principle in the objective pursued by the general corporate income tax in Luxembourg and to examining the tax ruling at issue without taking into account the way in which the said principle has actually been incorporated into that law with regard to integrated companies in particular.

By dismissing the Commission's understanding of the benchmark, the Court left Member states with more freedom to choose the reference framework under which they might adopt rules or administrative practices deviating from common rules without falling foul of the State aid prohibition in primary Union law.

Legal commentators have noted, however, that not all is lost for the Commission's scrutiny of discriminatory and/or preferential taxation in Member states given that in paragraph 122 of the judgment the Court states: *"the parameters laid down by national law are manifestly inconsistent with the objective of non-discriminatory taxation of all resident companies, whether integrated or not, pursued by the national tax system, by systematically leading to an undervaluation of the transfer prices applicable to integrated companies or to certain of them, such as finance companies, as compared to market prices for comparable transactions carried out by non-integrated companies".*

CFE Conference "Targeting the "Bad Apples": Enablers of Tax Avoidance"; Zagreb, 2 December 2022

CFE's 15th European Conference on Tax Advisers' Professional Affairs will be held in Zagreb, Croatia, on Friday 2 December 2022 from 09:30 am to 15:00 pm, organised in cooperation with the Croatian Chamber of Tax Advisers (HKPS), on the topic of "Targeting the "Bad Apples" : Enablers of Tax Avoidance – Is it Still a Substantial Problem in Europe?".

Keynote speakers in the first panel will include Benjamin Angel, Director in the European Commission, DG TAXUD and Paul Tang, Chair of European Parliament's Taxation Committee (FISC); Philippe Vanclooster, CFE; moderated by Dr. Sc. Nevia Čičin - Šain, Assistant Professor of Law, WU Vienna University of Business and Economics. Opening remarks will be provided by Piergiorgio Valente, President of CFE; Damir Brajković, President of the Croatian Chamber of Tax Advisers and a representative of the Ministry of Finance of the Republic of Croatia.
The second panel of speakers includes Judge Barbara Porizkova, Supreme Court of the Czech Republic; Dr. Ivan Čevizović, Croatian Chamber of Tax Advisers; Natalie Aymé, Partner Deloitte France; and Tomas Urbasek, Partner PwC Czech Republic, moderated by Aleksandar Ivanovski, Director of Tax Policy, CFE.

Further information and the registration page for the event can be found here.

OECD Warns BEPS Risks Remain in Absence of the Two Pillar Implementation

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A new OECD report highlights that BEPS risks remain in the absence of the two-pillar solution to ensure that large multinational enterprises (MNEs) pay a fair share of tax wherever they operate and earn their profits.The OECD's latest annual ***Corporate Tax Statistics***, covering over 160 countries and jurisdictions, includes new aggregated Country-by-Country Report (CbCR) data on the activities of almost 7,000 MNEs, representing a major boost in tax transparency efforts.

The report highlights that statutory Corporate Income Tax rates have continued to decrease on over the last two decades, although wth considerable variation among jurisdictions remains. The average combined (central and sub-central government) statutory tax rates for all covered jurisdictions was 20.0% in 2022, compared to 28.0% in 2000.

EU Commission Tax Symposium "On the Road to 2050" : 28 November 2022

The European Commission is holding a Tax Symposium on 28 November 2022 on the topic of *"On the Road to 2050"*, intended to examine how tax policies need to be re-orientated between now and 2050 to ensure fair taxation, and how taxation needs to adapt in the face of mega-trends such as climate change, aging populations, changing labour markets and digitalisation. They will also consider the role that taxation can play in confronting new and emerging challenges, particularly in light of the current geo-political environment. Speakers from the EU, civil service and government, NGOs, business and academia will discuss the above topics.

Registration is possible at this link.

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