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EU Commission Latest EU Law Infringement Package

The European Commission has issued a number of infringement decisions or letters of formal notice addressed to Member states for breach of their legal obligations under EU law. Germany received a letter of formal notice concerning discriminatory withholding taxation of dividends/ interest to charitable organisations established abroad, which was found by the Commission contrary to freedom of movement of capital. Under German tax law, dividends and interest paid to charities having their legal seat or the place of management in Germany are either exempt from withholding tax, or withholding tax is refunded. However, dividends and interest paid to comparable charities established in other EU and EEA Member States and third countries are taxed at a rate of 25% unless a relevant DTC provides for a reduced rate. This difference in treatment of domestic and cross-border dividend and interest distributions to charities constitutes a restriction on the free movement of capital, according to the European Commission.

Register Now: CFE Forum 2022 on 12 May 2022 in Brussels

CFE Tax Advisers Europe's 2022 Forum will be held on 12 May 2022 in Brussels on the topic of *"The Future of Holding Companies & VAT Grouping in the Current Tax Policy Climate"*. The conference will examine issues surrounding the

European Commission's Unshell Proposal and how policy developments affect the use of holding companies and VAT groups across tax structures.

Key-note on EU's Unshell proposal will be provided by Benjamin Angel, Director, DG TAXUD, European Commission. Speakers from a wide range of stakeholder perspectives will examine issues raised by the Commission's proposal, legitimate uses of holding companies, and problems with the divergence in approaches throughout the EU on VAT grouping. More details about the programme, line-up of speakers and the registration link for the event is available here.

CFE's Position on EU's Unshell Proposal: Opinion Statement

CFE Tax Advisers Europe has issued an Opinion Statement on the EU proposal on fighting the use of shell entities and arrangements for tax purposes (Unshell or ATAD3 proposal). CFE Tax Advisers Europe welcomes the work of the European Commission in seeking to reduce tax evasion throughout the EU, the aim of which CFE has always fully supported.

In seeking to support the Commission in this objective, CFE wishes to highlight the potential issues in practice raised by the proposed Directive, noting that the application of the existing anti-avoidance measures within the EU has become very complex in recent years. While CFE embraces the objectives expressed by the unshell proposal, it has concerns about the manner in which this draft directive intends to achieve these objectives and doubts whether these objectives will actually be achieved. This opinion statement elaborates these concerns and proposes alternative solutions that would, in the view of CFE, be more proportionate and suitable to achieve ATAD3's objectives and ensure compliance with primary EU law.

The proposed Directive seems to ignore the fact that transfer pricing and CFC rules already deal with the very issues that it is purporting to address. Indeed, the

past few years have seen the implementation of a trove of EU and broader international measures designed to counteract certain perceived abusive practices. These include the Multi-Lateral Instrument ('MLI'), limiting access to treaty benefits (PPT), EU Mandatory Reporting (via DAC 6), as well as two EU anti-tax avoidance directives ('ATAD'), comprising rules on CFCs, interest deductibility, anti-hybrid arrangements, exit taxes and general anti-avoidance. The effectiveness of these rules is yet to be fully seen. In the opinion of CFE, the proposed directive seems to assume that abusive situations persist, without having allowed these measures sufficient time to prove their relevance.

CFE suggest a different approach in respect of addressing the outstanding issues raised by shell entities:

- Introduce another iteration of the DAC directive by way of enhancing transparency between Member states and taxpayers, limiting the proposed directive to exchange of information (i.e. by removing the proposed articles 11 and 12);
- Create a list of Member states that have introduced the Principle Purpose Test (PPT) in their respective double tax treaties;
- Invite the European Commission to use the powers conferred on it by Article 258 of the Treaty on the Functioning of the EU to enforce the compliance by Member states with their obligation to prevent the avoidance of EU legislation (i.e. ATAD) and to do so in a manner that is compliant with primary EU law and settled ECJ case-law.

We invite you to read the Opinion Statement and would welcome any feedback or queries concerning the position paper.

Irish Tax Institute & Harvard Kennedy School Global Tax Conference, 17 & 18 May 2022

The Irish Tax Institute (ITI), a CFE Tax Advisers Europe Member organisation from Ireland, alongside the Harvard Kennedy School, Ash Centre for Democratic

Governance and Innovation, are co-hosting a virtual Global Tax Policy Conference on 17 and 18 May 2022 from 14:30 – 17:30 CEST.

Over the two days, expert speakers will discuss developments in the OECD Inclusive Framework process, tax administration in a digitalised world, tax and climate change, and what the next 5 years might look like for tax policy across the globe. The programme and panel speakers can be viewed here.

Registration is now open via this link.

Advocate General's Opinion in Case C-694/20 (Belgian DAC6 Legal Privilege Challenge)

The Advocate General Opinion in Case C-694/20 *Orde van Vlaamse Balies*, concerning whether or not the obligations under the Directive on Administrative Cooperation infringes upon the right to privacy and the right to a fair trial under Articles 7 and 47 of the Charter of Fundamental Rights of the European Union, respectively, was handed down on 5 April 2022.

The Advocate General Rantos in his opinion held that the requirement to notify another intermediary of the reporting obligations does not form part of any legal proceedings and therefore does not constitute a breach of the right to a fair trial. In relation to the right to privacy, AG Rantos held that should the identity of the intermediary be made known in fulfilment of the reporting requirement, this could constitute a breach of the right, but that the breach would not occur should the name of the intermediary not be disclosed.

AG Rantos accordingly concluded in his Opinion that the ECJ should hold that Article 8ab(5) of DAC6, by requiring a lawyer who acts as an intermediary and who, by relying on his professional secrecy, has a declaration waiver to notify without delay to another intermediary the reporting obligations incumbent upon it under paragraph 6 of this Article, does not infringe upon the right to respect for private life guaranteed by Article 7 of the Charter of Fundamental Rights of the

European Union, provided that that the name of this lawyer is not disclosed to the tax authorities in the context of the performance of the obligation to declare provided for in Article 8bisb, paragraph 9, second subparagraph, and paragraph 14, of that Directive. The decision of the Court is expected in the coming months.

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