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European Commission Unveils New Tax Package

The European Commission has now published its Tax Package for "fair and simple taxation", designed to address issues experienced in EU taxation arising in the course of *"a 'taxpayer's journey': from registering your business, to reporting, payment, verification, dealing with disputes."* The Tax Package is comprised of the following:

- **Tax Action Plan**

  The Action Plan consists of 25 steps to be taken by the Commission designed to make taxation *"fairer, simpler and more adapted to modern technologies".*

  As concerns indirect taxation, the Action Plan includes steps to: create a single VAT registration; modernise VAT reporting; update VAT rules for financial services and the sharing economy; extend the scope of the VAT One-Stop-Shop; monitor VAT transactions in real time through Eurofisc; launch an E-Commerce package for excise goods; evaluate and revise the special VAT scheme for travel agents; review and align VAT rules for passenger transportation with the EU Green Deal; and create a dispute resolution mechanism for VAT disputes.

  The Commission's Action Plan concerning direct taxation matters includes steps to: extend the automatic exchange of information to crypto assets and e-money; introduce digital solutions to levy taxes at source to facilitate tax payment/collection; harmonise tax residence criteria to avoid double (non)-taxation; improve technological tools for the exchange and sharing of tax information; establish a Cooperative Compliance framework to discuss means to resolve common cross-border tax issues; implement a standing committee for dispute resolution; examine the use of tax data by tax administrations; create an EU Tax Observatory examining issues of tax avoidance and evasion; create a Transfer Pricing Expert Group; and review and issue recommendations concerning taxpayers' rights and tax obligations.

  A schedule setting out the planned actions and their anticipated delivery dates can be found here.

- **Revision of the Directive on Administrative Cooperation – "DAC7"**

  The Commission has issued a proposal for a Council Directive to revise the Directive on Administrative Cooperation to extend EU exchange of information rules to information on income generated by sellers on digital platforms. Platforms will be required to report on the provision of services, the sale of goods, rental of property, rental of any mode of transport and investment, and lending in the context of crowdfunding.

The Directive aims to reduce administrative burdens on platforms by simplifying reporting requirements, enabling platforms to report in one single country of their choosing, once per year, allowing national tax authorities to identify where tax should be paid through the exchange of information. The Directive also sets out rules concerning joint tax audits.

Executive Vice-President Valdis Dombrovskis stated that *"In the future, EU countries should automatically exchange information about revenues that sellers generate by using online platforms. The idea is also to strengthen and clarify rules in areas where national governments work together to fight tax abuse, for example, joint tax audits."*

- **Communication on Tax Good Governance in the EU & Beyond**

The Commission's Communication discusses means to improve the EU's role in promoting tax good governance and tax transparency, which it aims to achieve by reforming the Code of Conduct on Business Taxation and making improvements to strengthen the EU's List of Non-Cooperative Jurisdictions for Tax Purposes. The Communication also outlines the EU's plan to meet its 2030 Sustainable Development Goals by assisting developing countries in the area of taxation.

The Commission aims to update the scoreboard used to select the jurisdictions that are screened by the Code of Conduct Group, and to review the criteria that jurisdictions must comply with, to update these to take into account developments in tax evasion practices. Additionally, the Commission aims to expand the mandate of the Code of Conduct Group to examine conditions leading to unfair tax competition and aggressive tax planning within the European Union, such as tax residency rules allowing for double non-taxation, tax exemptions without appropriate safeguards and special citizenship schemes. It also plans to introduce the parameter of minimum effective taxation.

In the fall of 2020 the Commission will publish its plans for business taxation for the 21st century, which will aim to complement the work being undertaken by the OECD on addressing challenges of the digital economy and minimum taxation. In early 2021, it will also set out plans for revising EU rules on energy taxation and introducing a WTO-compatible carbon border adjustment mechanism.

Fiscal State Aid: Apple General Court Judgment

The highly anticipated decision of the General Court in Ireland and Apple's €14 billion appeal in the State aid case concerning Ireland's tax treatment of Apple was published last week. The Court has annulled the Commission's decision that Ireland's tax authorities granted Apple a "selective advantage" by failing to employ appropriate profit allocation methods to apportion income of the Irish Apple branches, in contravention of EU State aid law. Ireland's and Apple's lawyers argued that the fact that Apple's products and services were developed in the United States exposed flaws in the primary line of the Commission's arguments, arguing the two branches simply could not be responsible for generating all of Apple's profits outside the US. Lawyers for the Commission argued that Ireland had not carried out the requisite assessment of the subsidiaries' activities, risks or assets. In addition, the Commission claimed at the hearing that the Irish Revenue, by accepting the 'arbitrary method' of calculating profits suggested by Apple without carrying out any assessment in itself gave rise to selective advantage, in contravention of both Irish tax law and EU State aid law.

The General Court held that:

> *"The Commission did not succeed in showing to the requisite legal standard that there was an advantage for the purposes of Article 107(1) TFEU…[and] incorrectly concluded, in its primary line of reasoning, that the Irish tax authorities had granted…an advantage as a result of not having allocated the Apple Group intellectual property licences and trading income…to the Irish branches…The Commission should have shown that that income represented the value of the activities actually carried out by the Irish branches themselves.*
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> *The General Court considers that the Commission did not succeed in demonstrating, in its subsidiary line of reasoning, methodological errors in the contested tax rulings which would have led to a reduction in…chargeable profits in Ireland. Although the General Court regrets the incomplete and occasionally inconsistent nature of the contested tax rulings, the defects identified by the Commission are not, in themselves, sufficient to prove the existence of an advantage for the purposes of Article 107(1) TFEU. Furthermore, the General Court considers that the Commission did not prove, in its alternative line of reasoning, that the contested tax rulings were the result of discretion exercised by the Irish tax authorities and that, accordingly, ASI and AOE had been granted a selective advantage."*

Commission Executive Vice President Margrethe Vestager in a press release discussing the outcome of the case stated, *"The Court once again confirmed that Member States must set their tax laws in respect of EU law, including State aid rules. The Court also confirmed the Commission's approach to assess whether a measure is selective and whether transactions between group companies give rise to an advantage under EU State aid rules based on the so-called 'arm's length principle'. We will decide on next steps once we have concluded our assessment of the judgment. But one thing is clear – the fight against aggressive tax planning is a marathon and not a sprint, and it takes place on very hilly ground."*

Should there be an onward appeal of the General Court judgment, the final determination of the case will be made by the Court of Justice of the European Union. The Court of Justice has repeatedly disagreed with the General Court on substantive issues concerning fiscal State aid (*Gibraltar, World Duty Free*) where the ECJ subsequently annulled General Court judgments in particular regarding the interpretation of the notion of 'selectivity'. It remains to be seen whether the Commission will appeal the decision, or whether, as a result of these developments, it will instead focus its efforts on Article 116 TFEU harmonisation instead of Article 107(1) TFEU.

OECD Tax Talks Webcast & G20 Report

The OECD will be hosting a Tax Talks Webcast on 22 July from 15:30 to 16:30 CEST. The webcast will discuss progress on the Inclusive Framework project on taxation of the digitalising economy, the OECD Model Rules for Reporting by Platform Operators, the recently released Corporate Tax Statistics report and other recent tax developments.

Ahead of the Webcast, the OECD G20 Report to finance ministers from the G20 countries has been published. As concerns taxation of the digital economy, the report sets out that progress has been made on developing technical and policy solutions to the working blocks for agreeing tax allocations rights under Pillar 1, notwithstanding the political uncertainty surrounding agreeing a solution for taxation of the digital economy. Additionally, the report details that some countries are of the view that an agreement on global minimum effective taxation under Pillar 2 could already be reached and implemented independently of Pillar 1. The report indicates that efforts will be focused on resolving the divergent views in the coming months, and that *"the technical development should be advanced enough to allow key political decisions to be taken on both pillars in October 2020".*

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, Grace Perez-Navarro, Deputy Director of the OECD Centre for Tax Policy and Administration, Achim Pross, Head of the International Co-operation and Tax Administration Division, David Bradbury, Head of the Tax Policy and Statistics Division, Åsa Johansson, Head of the Structural Policies Surveillance Division (OECD Economics Department) and Ben Dickinson, Head of the Global Relations and Development Division will give presentations during the webcast.

Those interested in participating in the webcast can register here. The webcast will be recorded and can be replayed via the OECD's website.

European Commission Recommends Financial Assistance be Linked to Tax Jurisdiction Blacklist

The European Commission has recommended EU Member States not to approve financial aid to companies that have a link to countries listed on the EU List of Non-Cooperative Jurisdictions for Tax Purposes, the "Blacklist", or to companies which have been convicted of serious financial crimes. The Commission in its recommendation suggests a number of conditions that Member States could apply concerning restrictions on financial support. It also contains suggested criteria for carve outs and implementation of the recommendation.

Discussing the recommendation, Paolo Gentiloni, Commissioner for the Economy, said: *"Fairness and solidarity lie at the heart of the EU's recovery efforts. We are all in this crisis together and everyone must pay their fair share of tax so that we can support and not undermine our collective efforts to recover. Those who deliberately bypass tax rules or engage in criminal activity should not benefit from the systems they are trying to circumvent. We must protect our public funds, so that they can truly support honest taxpayers across the EU."*

Member States are asked to inform the Commission concerning any conditions imposed in line with the recommendation. A report compiling details of the measures will be produced by the Commission in 2023, three years from the date the Recommendation was adopted.

2020 Report on Revenue Statistics in Asian and & Pacific Economies Published by OECD

The 2020 report on Revenue Statistics in Asian and Pacific Economies will be published this week by the OECD. The report is prepared in co-operation with the Asian Development Bank, the Pacific Island Tax Administrators Association and the Pacific Community, with financial support from the governments of Ireland, Japan, Luxembourg, Norway, Sweden and the United Kingdom. This year the report will also include a special feature on the tax policy and administration responses to COVID-19 in Asian and Pacific Economies.

The report compares tax revenue statistics for Australia, Bhutan, People's Republic of China, Cook Islands, Fiji, Indonesia, Japan, Kazakhstan, Korea, Malaysia, Mongolia, Nauru, New Zealand, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, Thailand, Tokelau and Vanuatu; and comparable non-tax revenue statistics for Bhutan, the Cook Islands, Fiji, Kazakhstan, Mongolia, Nauru, Philippines, Papua New Guinea, Samoa, Thailand, Tokelau and Vanuatu.

The report will be launched during a live webinar, scheduled to take place on Thursday 23 July 2020 from 08:00AM to 09:00AM CEST. Those interested in following the launch live can register for the webinar here.

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