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Vestager: Member States' Digital Taxes Not State Aid

The Executive Vice-President of the European Commission Margrethe Vestager said the European Commission is strongly supportive of actions taken by some EU Member states to impose unilateral digital services tax in absence of a collective action. *"I strongly applaud that Member states are picking it up where we failed as a community together to do something. It is very important in order to be able to answer the many businesses who pay their taxes, that you're willing to do something to make sure that your competitors, they pay as well,"* Vestager said in a Bloomberg interview.

Vestager admits however that a global solution at OECD level is preferable to a regional one, echoing statements made by the EU Economy Commissioner Paolo Gentiloni at the European Parliament. Both Vestager and Gentiloni thus agree that the EU's preferred outcome would be an agreed set of rules, to the benefit of governments and businesses alike. The main concern of the European Commission is that talks at OECD level might fail due to the US persistence on Pillar One being optional for companies within scope.

In addition, Vestager confirmed that nationally imposed digital taxes do not fall short of the EU State aid rules, as argued by some commentators, adding that the European Commission would not support measures that contravene EU law.

In relation to the State aid investigations into tax rulings (e.g. advance pricing agreements - APAs), Vestager said that the Commission has been successful in addressing preferential treatment offered to some companies by way of administrative tax rulings, but the Commission does not intend to stop its fiscal State aid investigations. "*We have seen a number of changes on ground. We've seen that in Luxembourg. They have changed the way they do tax rulings. Same in the Netherlands. The Commission has no plans to halt its efforts chasing individual tax rulings,* Vestager said.

European Semester Reports: Overview of Key Socio-Economic Parameters

The European Commission has published the European Semester country reports, evaluating the main economic challenges and opportunities for Member states. The country reports for this year focus in particular on Member States' adherence to the

Sustainable Development Goals (SDGs), as well as challenges related to the climate and energy transition.

Commenting the EU Economy Commissioner Paolo Gentiloni said of the reports: *"Today, we are taking the first step towards putting sustainability at the heart of EU economic policy and action. The 2020 country reports track progress towards the UN's Sustainable Development Goals and include a dedicated section on environmental sustainability. This goes hand in hand with the European Semester's focus on economic and social issues and the correction of macroeconomic imbalances. The reduction of public and private debt levels is proceeding at an uneven pace – and while current account deficits have for the most part been corrected, large surpluses remain a concern."*

Individual country reports address Member states' shortcomings on taxation-related policy recommendations, as well as enforcement of the EU Anti-Money laundering rules. For instance, the EU Commission summary factsheet highlights the following issues:

- With respect to Ireland, the Commission noted some progress in addressing shortcomings of the tax system that may facilitate aggressive tax planning, in particular on outbound payments;
- Italy was praised for fighting tax evasion by strengthening the compulsory use of e-payments, including through lower thresholds for cash payments;
- Lithuania made some progress on improved tax compliance;
- Austria made progress in shifting tax base away from labour to other sources;
- Sweden was criticized for the absence of action on limiting mortgage interest tax deductibility or increasing recurrent property taxes;
- Spain made no progress in strengthening the robustness of its fiscal framework; and,
- Estonia did not make sufficient progress to ensure effective supervision and enforcement of the EU anti-money laundering framework.

As a next step, the Commission will present the report to the European Parliament and the Council will assess the country reports.

ECJ Revisits 'Final Losses' Doctrine in Case C-405/18 *AURES*

The Court of Justice revisited its 'final losses' doctrine in the *Case C-405/18 Aures*, by establishing that Member states are not required to take into account losses accrued by a taxpayer in its former jurisdiction of tax residency. By such conclusion, the Court upheld its *National Grid Indus* (C-371/10) conclusions, explaining that the freedom of establishment does not oblige Member State of transferred residence to take into account losses realised in another Member State, which definitely fall outside the scope of its taxing jurisdiction.

The situation of Aures Holding was different to the one in *Case C-650/16 Bevola*, as the State of residence did not have tax jurisdiction over losses accrued while the company was under tax jurisdiction of another EU Member state.

Accordingly, the Court concludes, resident companies with losses in one Member State, and companies which transferred their tax residence to that Member State and had incurred a loss in another Member State in respect of a tax year during which they were tax residents in the latter Member State, are not in a comparable situation in the light of the objectives of preserving the allocation of the power to impose taxes between the Member States and preventing the double deduction of losses (para 53).

CFE Tax Advisers Europe published an Opinion Statement on the Court of Justice decision of 12 June 2018, in Case C-650/16 Bevola, concerning the utilisation of "final losses" attributable to a foreign permanent establishment and the viability of the *Marks & Spencer* "definitive losses" doctrine.

4. OECD Publishes Dispute Resolution Reports

The OECD has released the latest edition of dispute resolution peer review reports (BEPS Action 14) for Brunei Darussalam, Curaçao, Guernsey, Isle of Man, Jersey, Monaco, San Marino and Serbia. The reports assess each country's efforts to implement the BEPS Action 14 minimum standard, containing approximately 135 targeted recommendations that will be followed up in Stage 2 of the peer review process.

5. Taxpayers' Rights: Launch of the 2019 General Report – 13 May 2020 – Amsterdam

CFE Tax Advisers Europe, in cooperation with IBFD and de Nederlandse Orde van Belastingadviseurs (NOB), a CFE Member Organisation from the Netherlands, is pleased to announce that the launch of the 2019 General Report on the Observatory on the Protection of Taxpayers' Rights will take place on Wednesday 13 May 2020 in Amsterdam, the Netherlands.

On 13 May, Professor Pasquale Pistone will present the 2019 Annual Observatory on the Protection of Taxpayers' Rights Report. The conference will welcome tax experts and academics who will discuss the main findings of the Observatory on the Protection of Taxpayers' Rights Report, the impact of technology on taxpayers' rights and the implications of the Report for the Netherlands. Panellists include:

- Fabiola Annacondia, IBFD
- Professor Philip Baker QC, Oxford University & Field Court Tax Chambers
- Dick Barmentlo, FT-Advocaten
- Iñaki Bilbao Estrada, CEU Cardenal Herrrera
- Arjo van Eijsden, NOB and EY
- Anke Feenstra, Hertoghs Advocaten
- Henk Koller, NOB
- Nina E. Olson, Center for Taxpayer Rights
- Professor Dennis Weber, University of Amsterdam
- Stef van Weeghel, PwC
- Carlos Weffe, IBFD
- Ian Young, CFE

Registrations for this event are now open. Participants who register via this link by 31 March 2020 will benefit from an early bird price.

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