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Solving the Digital Tax Conundrum: US and France Pave Way for OECD Agreement

Last week took us a step closer to solving the digital tax conundrum, following meetings between French, EU and US officials at the margins of the World Economic Forum elite gathering in Davos. Bruno Le Maire, Minister of Finance of France, and Steven Mnuchin, the US Treasury Secretary, alongside OECD Secretary-General Angel Gurria agreed to avoid a potential trade war following the introduction of the French Digital Services Tax. The US side agreed to suspend the imposition of tariffs on French goods whilst France agreed not to collect the digital tax until the end of 2020, subject to an OECD agreement by the end of year.

French president Macron confirmed the positive developments, whilst expecting that Paris and Washington will continue negotiations over the digital tax at the OECD until the end of the year. *"France is pursuing its objective of fair taxation on digital companies and finding a compromise within the framework of the OECD,"* the French president stated. The White House did not comment on the matter, but US Assistant Secretary of Treasury Chip Harter suggested that the US letter of last December insisting on Pillar One being a ‘safe harbour regime’ is still valid. According to media reports, Mr Harter said the United States position has not changed, but the wording on ‘safe harbour’ should not be understood as ‘optional’.

On the other hand, the EU finance ministers could not agree on a unified EU position on the matter. At the last ECOFIN meeting Estonia, Poland and the Czech Republic were opposed to Pillar Two and the minimum tax regime, as presented by the OECD. The Czech Republic refused to agree to global minimum tax at all, citing tax sovereignty arguments. The Estonian position, on the other hand, was that genuine business activities with sufficient substance and taxable presence in a jurisdiction should be taxed according to the applicable tax legislation of that jurisdiction, without any other rules requiring them to ‘top-up’ the tax due up to the minimum rate, payable in a different jurisdiction. In absence of a substance carve-out, Estonia would reportedly not support Pillar Two, Bloomberg reports.

The EU is seeking to avoid a full-blown trade war with the US over digital taxes. To that end, Commission President Ursula von der Leyen met with US President Donald Trump in Davos. In addition, Croatia’s Prime Minister Andrej Plenković, currently holding the EU Presidency, stated that the EU and the US are partners who need to find a common language on digital tax at the level of OECD, saying that (national) measures that lead to tariff retaliation from the US side are not helpful.

The latest update from the OECD on this very topic will be cast via the OECD Tax Talks webpage at 31 January 14:00 – 15:00 CET. Registration for the webcast is now open.

2.

ATAF: Africa Has Right to Its Fair Share of Tax

Ahead of the Inclusive Framework meeting scheduled for 29 - 30 January, a meeting of the African Tax Administration Forum (ATAF) took place in Pretoria, for "*important discussions that will play a crucial role in determining how Africa responds to the global proposals to address the tax challenges from the digitalisation of the economy.*" ATAF members sought to agree a common position that will be presented on behalf of African countries in Paris, in particular by ensuring that "*new global tax rules will be fit for purpose in Africa and redress the current imbalance in taxing rights that disadvantage African countries*.", ATAF stated in a press-release.

3.

EU Developments: Croatia's EU Presidency Update, EU Parliament US Senate Letter & EU- US Carbon Tax Differences

Croatia's Deputy Prime Minister and Minister of Finance, Zdravko Marić exchanged views with Members of the European Parliament's Committee on Economic and Monetary Affairs (ECON) on 22 January, setting out the Presidency plans on taxation related files, including taxation of the digital economy. In addition, Mr Marić elaborated on the approach to be taken on strengthening EU's anti-money laundering rules.

Further progress on some tax files is expected later in this year, when both Croatia's presidency and the European Commission will present their detailed strategy. The European Commission, DG TAXUD, for its part is expected to deliver an action plan on 25 March.

In other EU developments this past week, 135 Members of the European Parliament (MEPs) have written a letter to US Senate Finance Committee concerning the international negotiations on BEPS and the digital services tax. The MEPs seek support from the US Senators for fair taxation of the digitalising economy, by joining forces and putting pressure on their respective governments to adopt a positive stance at the OECD negotiations and stand against retaliatory tariffs or taxes.

According to media reports, the split between the EU and the US on climate policy appears to be widening. The new battlefield could be the European Green Deal and the carbon taxation measures, such as taxing carbon imports by the EU. US Commerce Secretary, Wilbur Ross told the FT that carbon taxation measures taken by the EU that could be seen as protectionist like the digital taxes, will inevitably face US retaliation.

4.

EU & UK Sign Withdrawal Agreement – EU Asks Countries to Treat UK as EU Member State

On 24 January, the President of the European Council, Charles Michel and the President of the European Commission, Ursula von der Leyen signed the United Kingdom's Withdrawal Agreement, which formalises the UK's exit from the EU at midnight Central European Time on 31 January. Having received royal assent in the UK, the next stage involves European Parliament ratification on 29 January.

As of 1 February, the UK will cease to be a member state of the European Union, but the EU law will continue to apply to the UK at least until the end of the transition period – 31 December 2020 and the UK will be under jurisdiction of the European Court of Justice. Trade agreements can be negotiated by the UK with third countries during the transition period. A comprehensive free trade agreement will also be negotiated by the EU and the UK.

The Financial Times reported today that the European Commission will send a *note verbale* to 160 countries, a form of diplomatic correspondence, asking them to treat the United Kingdom exceptionally as a member state of the European Union until 31 December 2020, even though it will have left on 31 January 2020. The EU *note verbale* is intended to help the UK navigate through the uncertainty of the post-Brexit transition period.

5.

Reminder: Applications Open for the CFE *Albert J. Rädler* Medal Award

CFE Tax Advisers Europe, in cooperation with IBFD, reminds all tax students at Master's level, as well as their supervisors, that the CFE receives applications from eligible tax students for the *Albert J. Rädler* Medal Award until **20 February 2020**. The award is intended to encourage academic excellence among young tax students. The Medal will be awarded at the CFE Forum, our flagship international tax conference on 2 April in Brussels.

The CFE will take care of travel and accommodation arrangements for the successful candidate to attend the CFE Forum. In addition, there is a monetary prize courtesy of the Rädler family and complimentary academic literature from our publishing partner IBFD. Applications are welcome at info@taxadviserseurope.org. More details are available on the CFE website.

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