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Summary: OECD Public Consultation on the Taxation Challenges of the Digital Economy

As part of the ongoing work of the Inclusive Framework and the Task Force on the Digital Economy, the OECD organised a [public consultation](#) on 13-14 March on the tax challenges arising from the digitalisation of the economy, with 400 invited stakeholders from business, professional and trade associations, practice, NGOs and academics. The discussions focussed on the key questions identified in the OECD consultation document and the issues raised in the [written submissions](#) received as part of the consultation process. Over the two days, experts and four panels of speakers debated the design and administration considerations of the proposals for revised profit allocation and nexus rules presented under the first pillar (i.e., user participation, marketing intangibles and significant economic presence), as well as the policy rationale and objectives of the second pillar proposals on the global anti-base erosion proposal.

Perhaps not surprisingly, digital businesses expressed reservations about the scope of the user participation proposal and the 'arbitrary' distinction in ring-fencing particular business models. Conversely, non-digital companies articulated concerns about the scope of the marketing intangibles proposal by modifying the application of the arm's length principle. The common ground in discussions concerning the revised profit allocation rules was the importance of simplicity, certainty, the absence of double taxation or unilateral measures and presence of mandatory dispute resolution mechanisms in any future solution. Considering that proposals one and two (user contribution and marketing intangibles) bear similar features, it was suggested these proposals could be implemented through adjusting the present framework without the need to dismantle the whole international tax system. Some participants suggested alternative proposals, and even formulary apportionment, to the extent an agreement on the formulary elements was possible.

More concerns were raised regarding the global anti-base erosion proposals, with some participants highlighting that the residual BEPS issues have little to do with income allocation. Once the profit allocation issues have been resolved, a business representative said, the pressure on pillar two will be reduced considerably. The tax on base eroding payments was assessed as very complex, with double tax treaty issues, lack of dispute resolution, double taxation and, significantly, possible EU law challenges. A Big Four speaker said that tax advisers are agnostic to any outcome of this process, maintaining that there was a need for global consensus, and fast, and a need for analysis of potential unintended consequences, double taxation and administrative burden. Another business representative queried whether the minimum tax rates proposal is actually consistent with

the OECD's longstanding position that tax rates are a matter of national government's tax policy and parliamentary process, not international law.

From a developing country perspective, NGO representatives questioned the appropriateness of the OECD as a forum to hold these discussions, calling for a more inclusive international tax policy body to take over. NGOs criticised the tax on base eroding payments, whilst expressing more support for the income inclusion rule. The key role of transparency was stressed, followed by a call to make the current CbCR rules public, in order to allow developing countries access to data to make appropriate adjustments. A World Bank representative welcomed the discussion, raising the policy issue of inversions as a tax strategy that undermines the effectiveness of CFC rules in the context of the income inclusion rule discussion.

In concluding the two-day discussions, Pascal Saint-Amans, the Director of the OECD Centre for Tax Policy and Administration, praised the constructive contributions and the positive engagement. The Co-Chairs of the Task Force also stated they were pleased with the engagement of the stakeholders, who presented original ideas to address the significant challenges ahead. Overwhelmingly, the participants agreed on the flaws of the existing fragmented approach to taxation of the digital economy. There was a general acceptance on the need to redouble efforts to reach a global governmental agreement. Considering the ambitious timeline, the OECD announced more frequent meetings of the Task Force on the Digital Economy would be held, and another consultation where more detailed technical contributions are expected by the end of 2019.



EU-Wide Protection of Whistleblowers Agreed

On 11 March 2019, EU Council and Parliament negotiators [reached provisional agreement](#) on the proposed directive to establish EU-wide rules for the protection of whistleblowers who report on breaches of EU law, including those reporting on issues related to tax fraud and money laundering.

The proposed directive will provide those persons reporting on breaches of EU legislation with internal and external reporting procedures for whistleblowing. Companies and authorities will also have feedback obligations, such that they have 3 months to respond to whistleblower reports under the proposal. The directive also includes provisions which would forbid all forms of retaliation, to be enforced by means of sanctions. Whistleblowers are also to be provided access to free advice and remedies in instances where retaliation is experienced, with the burden of proof to be reversed such that the organisation or person must prove they are not acting in retaliation against the whistleblower.

In July 2018, the CFE issued an [Opinion Statement](#) on the EU Commission proposal, which set out CFE's support for proposals that seek to establish horizontal rules for protection of whistleblowers, as well as their role in advancing public policy interests, specifically reporting tax fraud, corruption, abusive and illegal practices. The Opinion Statement highlighted certain aspects of the Commission proposal in relation to taxation that in our members' view merited further technical refinement, in particular the broad wording of Article 1(1)d. However, the wide scope of application as proposed by Commission has been retained.

The agreement will now need to be confirmed by Coreper and the EU Parliament's Legal Affairs Committee, before a final vote of Council and the full House. If agreed, the directive will enter into force 20 days after publication in the EU Official Journal.



EU Council Updates “Blacklist” of Non-Cooperative Jurisdictions for Tax Purposes

Agreement [was reached](#) at last week's ECOFIN meeting on 12 March to update the list of non-cooperative tax jurisdictions for tax purposes, i.e. the “Blacklist”, in the first comprehensive revision of the list since it was created in 2017.

Following on from the Code of Conduct Group on Business Taxation's review of commitments made by jurisdictions to implement tax good governance principles of transparency, through automatic exchange of information, and becoming members of the Global Forum or ratifying the OECD Multilateral Convention on Mutual Administrative Assistance, the jurisdictions of Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Marshall Islands, Oman, United Arab Emirates and Vanuatu were added to the list for failing to comply with commitments by the agreed deadlines.

Countries who have made high-level commitments to remedy EU concerns and reform tax policies will be subject to close monitoring by the Council. The full list of jurisdictions that are now included on the list is as follows: American Samoa, Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Guam, Marshall Islands, Oman, Samoa, Trinidad and Tobago, United Arab Emirates, the US Virgin Islands and Vanuatu.



UK Publishes No-Deal Brexit Tariff Regime

On 13 March, the UK government [published details of a temporary tariff regime](#) that will apply in the event of no-deal Brexit for an initial period of 12 months, to be thereafter reviewed. Under the published regime, the vast majority of goods being imported, around 87% of goods, would be eligible for tariff-free importation.

Tariffs will apply to imports on finished automobiles to maintain the UK's automobile industry, certain fertilisers and fuels to protect against dumping, beef, lamb, pork, poultry and dairy products to protect the UK farming industry, and on bananas, raw cane sugar and certain fish, to continue commitments to provide preferential access to the UK for developing markets.

However, import tariffs will not apply to goods being imported from Ireland into Northern Ireland, as the government also announced it would temporarily not impose any new controls on imports at the Northern Ireland land border.

This regime is in addition to the [simplified transitional procedures](#) that will come into effect in the instance of a no-deal Brexit, whereby businesses established in the UK that import goods from the EU into the UK and register to be subject to transitional simplified procedures will be entitled to transport and import goods without the need for making customs declaration duties at the border. They will also be entitled to delay payment of import duties, if so desired.

Trade Policy Minister George Hollingberry said of the temporary tariff regime: *“This balanced approach will help to support British jobs and avoid potential price increases that would hit the poorest households the hardest. It represents a modest liberalisation of tariffs and we will be monitoring the economy closely, as well as consulting with businesses, to decide what our tariffs should be after this transitional period.”*



Global Forum Publishes Tax Transparency Peer Reviews

The OECD’s Global Forum on Transparency and Exchange of Information for Tax Purposes has [published seven peer reviews](#) assessing the compliance of certain jurisdictions with international standards of transparency and exchange of information on request. The reviews focused on performance concerning access to information, developing exchange of information networks and monitoring requests for information.

The jurisdictions subject to the peer reviews were Hong Kong, Liechtenstein, Luxembourg, the Netherlands, North Macedonia, Spain and the Turks and Caicos Islands. All jurisdictions were deemed “largely compliant”. The reviews include recommendations for improving their compliance rating.

The reviews were undertaken as part of the second round of peer reviews by the Global Forum, following the international standards for transparency and exchange of information being updated to include aspects relating to beneficial ownership.