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EU Finance Ministers Informal Meeting & Digital Tax Developments

The Romanian Presidency of the Council of the EU organised an informal ECOFIN (Financial and Economic Affairs Council) in Bucharest on 5-6 April, where ministers discussed the role of taxation in supporting inclusive and sustainable growth, the EU priorities in fighting tax evasion and avoidance and the issues of excessive taxation of labour in certain Member states. At the suggestion of the European Commission, a dedicated debate on the pathway forward regarding the digital tax plans was tabled for the agenda of the 17 May ECOFIN meeting. New specific proposals are expected in due course and a discussion on a coordinated EU position ahead of the G20 Osaka summit scheduled for 28-29 June.

The OECD Secretary-General Ángel Gurría was also in attendance and updated the EU Finance ministers on progress made in finding global solutions to digital taxation. In the interim, the United States representation to the OECD stated that "significant progress" had been made in the OECD BEPS discussions (pillar two proposals) and expressed their hope for an agreement on comprehensive, broad-based solution in the next while. The US assistant secretary for international tax at the US Treasury Lafayette "Chip" Harter warned of the technical complexities on designing a minimum global tax that would be feasible on a global level, in spite of the simplicity of the idea as a political concept.

Earlier today, speaking in Paris before a meeting with senior aids of President Macron, Margrethe Vestager, EU Competition Commissioner and likely EU Commission presidency candidate, expressed her support for Member states' national digital tax plans. "*The best thing at present is a global solution, but if we want solutions in a reasonable time, then Europe must step forward.*", Vestager said. The European Commission plans for gross revenue taxation on digital companies operating in the Single Market failed to gain unanimous support among the EU Member states and came to a grinding halt in March when the Nordic countries and Ireland vetoed the directive at Council level. Several EU Member states including France, United Kingdom, Austria, Italy and Spain have as a result considered or enacted domestic legislation pending a global solution at the OECD level.

EU Commission Publishes "DAC6" Implementing Regulation

The European Commission has published Implementing Regulation (EU) 2019/532 amending Implementing Regulation (EU) 2015/2378 as regards the standard forms, including linguistic arrangements, for the mandatory automatic exchange of information on reportable cross-border arrangements.

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The short text of this Implementing Regulation concerning the Directive on Mandatory Disclosure Rules, commonly referred to as DAC6, adds a requirement of including a reference number of the reportable cross-border arrangement to the standardised form for the mandatory automatic exchange of information on reportable cross-border arrangements pursuant to Article 8ab of Directive 2011/16/EU. The Implementing Regulation shall apply from 1 July 2020.

3.

EU Commission Declares Part of UK CFC Rules in Breach of EU State Aid Law

The European Commission concluded on 2 April an investigation into the compliance of UK's Controlled Foreign Company (CFC) legislation with the EU State aid rules, declaring that the application of the Group Financing Exemption contained in the Finance Act 2012 partly constitutes unlawful State aid to certain multinational companies. The Commission also stated that the present UK CFC regime, introduced with ATAD as of 1 January 2019, no longer gave rise to any State concerns.

Between 2013 and end-2018, the UK CFC rules included a Group Financing Exemption that allowed multinational companies to benefit from a full or partial exemption on interest payments from loans, i.e. on payments related to certain financing income. According to the European Commission, the exemption is compliant with the State aid rules where the financing income is derived from non-UK activities. Conversely, the Group Financing Exemption on financing income derived from UK activities was considered to be in breach of the State aid rules. As a consequence, the Commission concludes, the beneficiaries of the measure received an undue advantage over UK competitors who were not able to rely on such exemption and were subject to the headline corporate tax rate. Further technical detail of Commission's reasoning will become available in due course with publication of the decision in the Official Journal of the European Union.

It is not yet clear how the HMRC will enforce this EU decision against the companies identified as tax exemption beneficiaries, considering the Brexit uncertainty. The EU has stated that the State aid rules continue to apply to the United Kingdom until it has formally left the EU, whereas the UK Government has indicated a close regulatory alignment of UK's post-Brexit State aid regime with the European, as set out in the draft UK State Aid (EU Exit) 2019 Regulations.

4.

European Parliament Tax Inquiry Report Published

European Parliament adopted the final report on financial crimes, tax evasion and tax avoidance setting out the recommendations following TAX3 Committee inquiry and hearings concerning anti-money laundering and aggressive tax planning. The Plenary adopted the report on 26 March by 505 in favour / 63 against / 87 abstentions following a discussion of the 1284 amendments tabled by members at the Committee level.

Key findings and recommendations in the Report are that the Commission and Council adopt a comprehensive definition of aggressive tax planning, commence work immediately on establishing European financial police force, an EU financial intelligence unit, and an EU anti-money laundering supranational watchdog. The European Parliament, which represents EU citizens through directly elected Members, but with consultative role on matters of taxation, noted the lack of political will in EU Member states to address tax evasion, tax avoidance and financial crime. Seven EU countries (Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and the Netherlands) have been criticised by the Commission for shortcomings in their tax systems that facilitate aggressive tax planning. The European Parliament also expressed regret that Denmark, Finland, Ireland and Sweden continue to maintain their opposition to EU digital tax proposals.

It is widely expected that the newly elected Parliament will establish a permanent tax inquiry committee following the EU elections in May.

5. EU Transfer-Pricing Forum Publishes Profit-Splits Report

The EU Transfer Pricing Forum published a Report on the application of the profit split method, clarifying key concepts in the application of this transfer-pricing method in an EU context. The report addresses issues such as in which circumstances it may be considered the most appropriate transfer pricing method and how to split the profits based on the concepts described in the revised OECD Guidelines as well as by providing an inventory of recurrent splitting factors. The report is complementary to the text of the OECD Revised Guidelines on the application of the Transactional Profit Split Method issued in June 2018.