



BRUSSELS | DECEMBER 2019

1. OECD Meeting on Pillar Two: Stakeholders' Input on the OECD Secretariat Proposals

A public consultation took place at the OECD in Paris on 9 December concerning the OECD Global Anti-Base Erosion Pillar 2 Proposal. Representatives from the OECD, the BEPS Inclusive Framework, academics, tax practitioners and advisers and representatives of business were in attendance. Ahead of the consultation, the OECD [published the comments](#) submitted by stakeholders to the Secretariat proposals.

CFE issued an [Opinion Statement](#) responding to the consultation setting out its view that there are too many variables in the GloBE proposal, with ramifications that could arise from the open policy and key design questions, calling for more certainty, simplicity and absence of double or multiple taxation. CFE's statement highlights a number of key elements that should be embedded as part of this process, namely that:

- The process needs to address the interaction of the four elements of Pillar Two, as it transpires that these are not intended to apply simultaneously, but no decision has been made as to which rule will take priority.
- The complexity of this proposal under Pillar Two confirms the need for a streamlined multilateral cooperation process; otherwise the system will become unworkable.
- The introduction of CFC rules are designed to achieve the same objective as the income inclusion rule. From CFE's perspective a simpler alternative to the income inclusion rule might be world-wide introduction of effective CFC rules.
- There are potentially a number of EU law points raised with the income inclusion rule which must be considered and resolved.
- The achievement of the policy aim to establish global minimum tax will depend significantly on the chosen model: jurisdiction-by-jurisdiction approach or an average global rate approach.
- Clarity would be welcome on the interaction between Pillar One and Pillar Two – CFE welcomes introduction of multilateral instruments where treaty benefits/ payments are being denied based on effective rate under Pillar Two, if the effective tax rate is based on a payment that is subsequently spread across multiple jurisdictions under Pillar One.
- As with Pillar One enhanced dispute prevention and resolution mechanisms will be essential, including multilateral mandatory binding arbitration.
- CFE is concerned that the use of financial accounts as a starting point for determining the tax base for the GloBE proposal would amount to more complexity.

Additionally, to evaluate the full effect of the existing BEPS standards, some of which are still under implementation in most countries of the Inclusive Framework, CFE in its Opinion Statement set out that a longer-term perspective seems more appropriate to appreciate the entirety of the remaining BEPS issues.

Those who were unable to attend can watch the consultation on [OECD WebTV](#), via the OnDemand tab of the OECD platform.

Work at government representative level is ongoing, with the Secretariat proposal serving as a blueprint for further negotiations. The next Inclusive Framework meeting is scheduled for January 2020. However, the anticipated timeline for progress concerning the OECD proposals may be compromised by the recent position adopted by the US in its letter to the OECD on 3 December, suggesting the Pillar 1 proposals could apply as a safe-harbour.

2. Tax Statistics Indicate Revenue Plateau

In December, the OECD published the [Revenue Statistics 2019](#) report. The report demonstrates that the average tax to GDP in the majority of the jurisdictions had not changed significantly from 2017 to 2018, and had in fact decreased in 15 countries. Significantly, the overhaul of the American corporate tax system led to a decrease from 26.8% in 2017 to 24.3% in 2018. Increases in tax revenues were observed in 19 countries.

The statistics from the report can be accessed via the OECD Global Revenue Statistic database, which provides detailed comparable taxation revenue information concerning jurisdictions.

3. US Letter Threatens to Upend OECD Digital Tax Discussions

In a letter to the OECD dated 3 December US Treasury Secretary, Steven Mnuchin stated that the US has *“serious concerns regarding potential mandatory departures from arm’s-length transfer pricing and taxable nexus standards—longstanding pillars of the international tax system upon which U.S. taxpayers rely, Nevertheless, we believe that taxpayer concerns could be addressed and the goals of Pillar 1 could be substantially achieved by making Pillar 1 a safe-harbour regime”*.

Were the Pillar 1 proposals to take the form of a safe harbour, this would allow governments to choose to adopt the regime, as opposed to it being mandatory to adopt it. If the approach were to be mandatory for the countries signing up, as was planned up until the US letter being sent, this would become mandatory for example by way of signing a new MLI. It would appear that the US is now proposing the measure be designed as a "safe harbour", meaning that companies could choose to apply or ignore Pillar 1.

In the [response](#) to the US letter, Angel Gurría, Secretary-General of the OECD, stated that *“throughout the extensive consultation process, however, we had so far not come across the notion that Pillar 1 could be a safe-harbour regime”*, emphasising that the public consultations held to date *“clearly identified the need for greater tax certainty and administrability”*, noting that this *“is why the OECD proposal on a “Unified Approach” contains a very strong tax*

certainty dimension". The letter notes that the US raising this issue may impact on the ability of the OECD to adhere to the deadlines agreed by the Inclusive Forum.

The US has been invited to meeting with the OECD prior to Christmas to discuss the issue further.

4. Montenegro & Honduras Join Inclusive Framework on BEPS

In December, both Montenegro and Honduras became members of the [OECD/G20 Inclusive Framework on BEPS](#), becoming the 136th and 137th countries to join, respectively. The OECD's Inclusive Framework of minimum standards was devised by the OECD and G20 countries as part of the 2015 Base Erosion Profit Shifting Plan (BEPS).

Joining the OECD Inclusive Framework also indicates compliance with conditions set by the European Commission concerning the EU's list of non-cooperative jurisdictions in taxation matters aimed at promoting tax good governance and minimising tax avoidance.

5. New EU Commission Takes Office

The newly elected European Commission / College of Commissioners led by President Ursula von der Leyen took over from Jean Claude Juncker in December, becoming the first woman to lead the EU 'government'. With the first gender-balanced Cabinet, von der Leyen [promised](#) to lead a geopolitical Commission that will harness the opportunities of the digital age whilst protecting the 'European way of life'. The new Economy Commissioner, Paolo Gentiloni, whose portfolio includes taxation will work together with Executive Vice-President Margrethe Vestager who is responsible for overseeing the enforcement of the EU State aid rules as well as making sure that Europe benefits from the digitalisation of the economy.

In her first working day, President von der Leyen pledged to make Europe the first climate neutral continent by 2050. The [New Green Deal](#) for Europe includes a revised Energy Taxation Directive. According to the leaked draft, the Commission will present a proposal to revise the Energy Taxation Directive to align it with Europe's climate ambitions by instructing the Commission services to "send the right pricing signals through appropriate taxation and subsidies policies, reflecting too on the use of competition policy tools that could support such transition". To that aim, the Commission will pursue efforts to move away from unanimity for taxation policies, and will review the State aid guidelines for environment and energy, to bring them in line with the New Green Deal. [Draft Council Conclusions](#) on the EU energy taxation framework also refer to energy taxation as an important fiscal instrument that could steer successful climate-friendly transition towards lower greenhouse gas emissions.

6. Recap: CFE Conference on AML Rules, Paris - 29 November 2019

The 12th European Conference on Tax Advisers' Professional Affairs, hosted by CFE and IACF, took place on 29 November 2019 entitled "Making Anti-Money Laundering More Effective for Tax Advisers". With the introduction of various compliance obligations arising out of the EU

anti-money laundering rules, that have been introduced by the 5th AMLD, panellists also discussed the issues of introduction of beneficial ownership registers and the related trends of making such registers public, as well as the existing FATF Standards and Recommendations that build on other EU transparency initiatives to prevent money laundering. As such, the panellists addressed the newly established regulatory environment as well as the background issues arising out of various public revelations such as Panama Papers, how those affected the public, industries including tax advisory services and financial institutions, and how the OECD efforts in fighting money laundering by the unit on Tax & Crime address these problems.

The panel 1 discussion addressed the international approach against money-laundering, and was chaired by Dick Barmentlo, Member of the CFE Professional Affairs Committee. As a key-note speaker, Nilimesh Baruah from the OECD Centre for Tax Policy and Administration presented the OECD work related to tax and crimes. Mr Baruah discussed the increasingly complex and innovative forms of tax evasion and other financial crimes as well as the intrinsic link between such crime and the use of corporate vehicles. Coinciding with the 10th Anniversary of the OECD Global Forum on Tax Transparency and Exchange of Information, Mr Baruah highlighted the indispensable role of the Global Forum in improving transparency tools worldwide. Mr Baruah also spoke of the role of the Forum in providing governments tools to exchange data on previously opaque information, and give enforcement authorities means to address issues arising from the opacity of such structures for the benefit of their citizens.

Dr Kateryna Bogouslavska, of the Basel Institute of Governance and Chatham House explained the relevance of the Basel AML Index, a research based ranking of countries' exposure to ML and TF risks. Dr Bogouslavska discussed the tax related risks and the relevance for tax advisers of the data and analysis contained in the publicly available Basel AML Index. In the same panel discussion, a UK perspective on the AML approach was presented by Samantha Bourton of the UWA, who described the UK as one of the pioneer jurisdictions in implementing key AML international obligations, often going well beyond the minimal requirements of the EU legislation. Finally, Professor Robby Houben, of the University of Antwerp discussed the emergence and proliferation of crypto assets and the risks for money laundering inherently contained in such new technologies largely based on distributed ledgers such as blockchain. In conclusion, Prof. Houben suggested that the perceived risks need to be addressed with future-proof regulation and enforcement, rather than 'blaming' the technology itself, which should be harnessed for wider societal benefit.

The second panel examined the perceived risks posed by the tax profession in facilitating money laundering based on the EU's Risk Assessments, compliance with the new and existing EU AML Directives and efforts taken to address money laundering in the broader international context and the effect this has on tax evasion. The panel discussion was chaired by Heather Brehcist, Head of Professional Standards at the Chartered Institute of Taxation (UK). Panellists considered the effectiveness and the impact of existing EU rules and the new requirements of the 5th AMLD, including making beneficial owners of legal entities registers public and providing increased access to information on the beneficial ownership. Wim Gohres, Chair of CFE's Professional Affairs Committee and John Binns, Partner BCL Solicitors UK, presented the AML rules in practice. Mr Gohres presented the application and administration of the AML rules in practice from a perspective of AML compliance in the Netherlands. Mr Binns highlighted the risks, challenge and opportunities arising out of the potential regulatory divergence between EU and the UK post-Brexit. Christian Leroy, a Member of the Board of the Conseil National des Barreaux, France compared and contrasted the differences in the implementation of the AML regime across EU jurisdictions, primarily

identifying the issue of the original intent of the AML regime to apply to the financial sector, such as banks, and subsequently being adapted to the non-financial sectors. Lastly, Gary Ashford, CFE Vice-President discussed the approach to civil treatment of tax fraud evaluating the possibilities and risks, the client perspective on such issues, reputational risks and transparency issues arising out of the international legal obligations such as DAC and OECD-based instruments for exchange of information. Mr Ashford highlighted the issues related to civil investigations of tax fraud, such as contractual disclosure facilities and the negotiated financial settlements.

7. Turkey Introduces Digital Tax

In December, [new legislation](#) passed by Turkey's Parliament was published in the country's official gazette, which introduces a digital services tax to apply to digital advertising, sales of digital content and online digital marketplaces.

The legislation will impose a 7.5% digital services tax on domestic Turkish digital sales for companies with a global turnover above 750 million Euros, and a national turnover above 20 million Turkish lira.

The tax will apply from March 2020.

8. Council of EU Adopts Report on Defensive Administrative Measures for Tax Blacklist

In December, the Council of the EU adopted a [report](#) of the EU's Code of Conduct Group (Business Taxation), which sets out a detailed 6-monthly progress report on achievements of the Code of Conduct Group, and the status of jurisdictions that have been examined under the list.

Notably, the report details that the Code of Conduct Group reached agreement at its meeting on 14 November concerning guidance for Members States on defensive measures that can be taken in the tax field concerning non-cooperative jurisdictions.

The guidance sets out co-ordinated actions for Members States to take of a legislative nature, to encourage compliance with the Code of Conduct screening criteria as well as other international standards. Member States are recommended to apply at least one of the measures, which include non-deductibility of costs, CFC rules, withholding tax measures and denial of participation exemption on profit distribution.

9. Brazil Transfer Pricing Report Published

In December, the OECD published a [report](#) concerning a transfer pricing project carried out between the Brazil Revenue Authority and the OECD, comparing the present Brazilian transfer pricing framework against the OECD Transfer Pricing Guidelines for Multinational Enterprise and Tax Administrations.

The project was launched in February 2018, as a means to build on Brazil's collaboration with the OECD after it joined the Global Forum on Transparency and Exchange of Information for Tax Purposes.

10. EU Council Adopts New Anti-Money Laundering Framework

The Council of the EU on 5 December [adopted conclusions](#) setting out priorities for the EU's new anti-money laundering framework, seeking to guide the EU Commission in introducing harmonised EU anti-money laundering rules as well as enhanced anti-money laundering supervision across the EU, primarily addressed to the financial sector.

The Council in its recommendations urges Member States to transpose the AML legislation as soon as possible into national law. The conclusions also invite the Commission to explore further possible means of improving AML rules, such as further enhanced cooperation between authorities involved in anti-money laundering.

The conclusions can be viewed [here](#).