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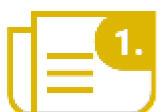

EU Developments: Parliamentary Week & Article 116 TFEU to Bypass Unanimity in Tax at EU Level

Speaking at the European Parliamentary Week 2020 on 18 February 2020 in Brussels, organised by the European Parliament in cooperation with the Croatian Presidency of the EU, the EU Commissioner Paolo Gentiloni and the Director of the OECD Centre for Tax Policy and Administration Pascal Saint-Amans agreed that they would prefer a common global solution on the taxation of the digital economy as a Plan A outcome.

Commissioner Gentiloni, for the Commission's part, confirmed that it will be more beneficial for governments and businesses to work with an agreed set of rules rather than a plethora of unilateral and uncoordinated measures. On the other hand, Commissioner Gentiloni expressed concern about the insistence of the United States on the optionality of Pillar One. "*Safe harbour cannot be understood differently to optionality, and this is not the right approach to taxation. The EU Commission must in the alternative go on with its own proposal by the end of the year, it is a political commitment made by President von der Leyen, but we are now concentrated only on Plan A which is at the OECD level.*", Commissioner Gentiloni said.

Separately, speaking at an event in Brussels, the newly appointed Director for Direct Taxation and Tax Coordination in the European Commission Benjamin Angel indicated that the Commission is considering using the powers of Article 116 of the Treaty of the Functioning of the European Union to bypass the unanimity requirement to decision making in taxation. Under this provision, the European Parliament and the Council can issue directives in areas which cause distortions of the Single Market in accordance with the ordinary legislative procedure. In practice, if the Commission proposes use of this procedure, it will require qualified majority from the outset to adopt directives in the taxation area, should distortions of the Single Market be established as a reason.

G20 Communiqué: Overcome Remaining Differences for Further Progress

No significant progress was made at this weekend's G20 meeting in Riyadh, as concerns the taxation challenges of the digitalisation of the economy. Reportedly, there were tensions between the US Secretary of Treasury and his European counterparts, with European

Commission officials tweeting that the US was not engaging and Secretary Mnuchin had left the room without taking the floor.

The official Communique of the G20 states that the leaders encourage further progress on both Pillars to overcome remaining differences and reaffirm their commitment to reach a consensus-based solution with a final report to be delivered by the end of 2020. The next meeting of the Inclusive Framework is scheduled for this summer in Berlin.

VAT: Simplified Rules for Small Businesses & Cross-Border Tax Fraud

The Council of the European Union (ECOFIN) adopted two proposals concerning simplification of VAT rules for small business and prevention of tax fraud in cross-border e-commerce. Under these measures amending Directive 2006/112/EC, small companies will be able to qualify for simplified VAT compliance rules, where their annual turnover remains below a threshold set by a Member State (lower than €85,000). Subject to certain conditions, small businesses from other EU Member States, which do not exceed this threshold, will also be able to benefit from the simplified scheme if their annual EU turnover does not exceed €100,000.

The second set of rules aims to facilitate detection of tax fraud in cross-border e-commerce transactions and harmonised collection by Member States of records made available electronically by payment service providers. In addition, a new central electronic system will be set up for the storage of the payment information and for the further processing of this information by national tax authorities. The new measures will apply as of 1 January 2024.

EU Revises 'Blacklist' of Non-Cooperative Jurisdictions

The EU has revised its blacklist of jurisdictions considered non-compliant for tax purposes. On 18 February's ECOFIN Council meeting, ministers agreed to add Cayman Islands, Palau, Panama and Seychelles to the EU's blacklist. 16 jurisdictions (Antigua and Barbuda, Armenia, Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cabo Verde, Cook Islands, Curaçao, Marshall Islands, Montenegro, Nauru, Niue, Saint Kitts and Nevis, Vietnam) reportedly implemented the required reforms to comply with EU's tax good governance criteria and were removed from Annex II.

Commenting on behalf of the EU Presidency, Croatia's Finance Minister Zdravko Marić said of the developments: "*The work on the list of non-cooperative tax jurisdictions is based on a thorough process of assessment, monitoring and dialogue with about 70 third country jurisdictions. Since we started this exercise, 49 countries have implemented the necessary tax reforms to comply with the EU's criteria. This is an undeniable success. But it is also work in progress and a dynamic process where our methodology and criteria are constantly reviewed.*"

European Semester Recommendations Endorsed by Council

The Council of EU has endorsed the European Semester recommendations on the economic policy in the EU. The recommendations are of particular concern for the Euro area and are expected to be adopted by the European Council (heads of states and governments) in March.

The Recommendations call for better coordination of fiscal policies, in particular by addressing efforts in simplifying and modernising the tax systems. The report calls to address tax fraud, evasion, and avoidance, through measures against Aggressive Tax Planning, taking account of the on-going discussions at the OECD Inclusive Framework on the remaining BEPS issues, in order to make tax systems more efficient and fairer.

"The ease with which mobile resources can move within the euro area is one of the foundations of the internal market but also increases the scope for tax competition. Coordination among Member States is therefore essential to address profit-shifting and harmful tax practices and avoid an overall race to the bottom in terms of corporate taxation. Working towards an agreement for a Common Consolidated Corporate Tax Base as well as an agreement on the OECD Inclusive framework on the remaining BEPS issues to review profit allocation among countries and ensure minimum effective taxation could be instrumental in this endeavour."

The Recommendations conclude that Member States should better coordinate to improve the effectiveness of national fiscal frameworks and adopt growth-friendly tax measures that foster a sustainable economy. Finally, Member states are encouraged to support and implement EU actions to combat Aggressive Tax Planning in order to avoid a race to the bottom in corporate taxation.