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Historical Agreement on International Taxation Under OECD Auspices

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Following years of difficult discussions, under the auspices of the OECD and G20, 136 jurisdictions reached an agreement on global minimum tax and partial reallocation of profit to market countries, marking the most significant reform of international tax rules in history. The Statement released by the OECD/G20 Inclusive Framework on BEPS states the detail of the agreement of 8 October 2021 and the annex with an implementation timeline. Under the agreement, more than $125 billion from circa 100 largest MNEs will be reallocated to countries in which such companies have had extensive operations and revenue, but did not have taxable presence for corporation tax purposes under existing rules. With Ireland, Estonia and Hungary having withdrawn their objections, in a European context, the agreement now paves the way for implementation with instruments of EU law. Countries that have not yet joined the agreement are Kenya, Nigeria, Pakistan and Sri Lanka.

Pillar One, the profit reallocation element of the agreement, would require a new multilateral instrument to be signed next year, with effective implementation from 2023. Notably, regarding Pillar One, the agreement ensures a standstill clause under which existing Digital Service Taxes and other similar relevant unilateral measures must be frozen or abolished in due course, under certain conditions. Such provisions alleviate potential problems with US implementation, given the concerns expressed by US Secretary of Treasury Yellen who urged Congress to implement the deal swiftly by way of reconciliation process. Under said process, the US Senate could pass the bill implementing Pillar 1 with a simple majority of senators. Regarding Pillar Two, OECD intends to develop model rules by the end of this year, which will be enacted into domestic legislation next year, to be effective in 2023.

On behalf of the EU, European Commission President Ursula von der Leyen said: "I welcome the agreement on global tax reform. This is a historic moment. It is a major step forward in making our global tax system fairer. The European Commission has been strongly supporting this international effort, because asking big companies to pay the right amount of tax is not only a question of public finances. It is above all a question of basic fairness. We want a society in which there is one set of rules for all. All companies have to pay their fair share," President von der Leyen said.

Calling it "once in a generation achievement of economic diplomacy", US President Joe Biden said the agreement has established for the first time in history "*a strong global minimum tax that will finally even the playing field for American workers and taxpayers, along with the rest of the world."* The deal "*brings us one step closer to finally ending that race to the bottom, to ensure that profitable corporations pay their fair share, and provide governments with the resources to invest in their workers and economies",* President Biden said of the occasion.

French President Emmanuel Macron said the historic agreement is a victory for tax justice: *"For four years, we have been working for a fair taxation of multinational companies and digital giants. The agreement reached at the OECD is historical, it is a major step forward for tax justice*," President Macron wrote on Twitter, whilst the UK Chancellor Rishi Sunak said the agreement would "*upgrade the global tax system for the modern age. We now have a clear path to a fairer tax system, where large global players pay their fair share wherever they do business*," Sunak said.

Finally, OECD Secretary-General Mathias Cormann said the agreement would improve international tax arrangements: *"This is a major victory for effective and balanced multilateralism. It is a far-reaching agreement which ensures our international tax system is fit for purpose in a digitalised and globalised world economy. We must now work swiftly and diligently to ensure the effective implementation of this major reform*," Cormann said.

EU Updates 'Blacklist' of Non-Cooperative Jurisdictions

The Council of the European Union, sitting as ECOFIN, on its meeting of 5 October decided to remove a number of countries from the EU blacklist of non-cooperative jurisdictions for tax purposes, whilst adding certain countries to the 'watchlist'. The Council removed Anguilla, Dominica and Seychelles from the EU list, given they were considered 'largely compliant' by the OECD Global

Forum regarding the exchange of information on request. A number of countries were added to the watchlist, formally Annex II, with countries that comply with international tax standards but that have yet to implementing EU's tax good governance requirements. Costa Rica, Hong Kong, Malaysia, North Macedonia, Qatar and Uruguay have now been added to this document, while Australia, Eswatini and Maldives have have been removed for having implemented the necessary reforms, as stated by the Council.

The latest EU list update was called 'grotesque' by some European Parliament members and other critics, in light of the Pandora Papers revelations on the role of certain off-shore jurisdictions.

European Parliament Resolution on EU Code of Conduct for Business Taxation

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The EU Parliament has renewed criticism of the EU Blacklist following the publication of the Pandora Papers and the latest update, adopting a Resolution at its plenary session in Strasbourg on 6 October. The Parliament and other critics of the Blacklist call for the criteria to be reviewed and linked to real economic activity in a given jurisdiction by companies, and for zero or low tax jurisdictions to be automatically included in the list.

According to the resolution, the EU should reform the Code of Conduct for Business Taxation and called on the Commission to evaluate the effectiveness of patent boxes and other intellectual property (IP) regimes under the new nexus approach defined by Action 5 of the BEPS Action Plan on HTP, including the impact on revenue losses. The European Parliament also asked the Commission to consider proposals if there is no impact of IP regimes on real economic activity, while noting that the US administration is proposing to repeal its Foreign-Derived Intangible Income (FDII) rules.

Regarding the reform of the Code of Conduct, the Parliament asked for revision of the criteria, the governance and the scope of the Group through a binding instrument built on the current intergovernmental arrangements,
with involvement of experts from civil society, the Commission and Parliament, which will allow for more productive fight against harmful tax practices, the resolution concludes.

French Progressive MEP Aurore Lalucq, the parliament rapporteur, said these rules must be “a sharp weapon in the fight against tax avoidance and evasion” and proposed a revised code called FATAL, framework on aggressive tax arrangements and low-rates.

EU Climate Policy Support In Advance of COP26

The Council of the EU approved conclusions on climate finance ahead of COP26, the 26th Conference of the Parties to the United Nations Framework Convention on Climate Change in Glasgow. The conclusions highlight EU's commitment to increase contribution to international climate change policies. The conclusions also emphasise the continued EU support for the implementation of the ambitious goals of the Paris Agreement. Ministers decided to include climate policy considerations into macro-fiscal policy making and budgetary processes in order to prioritize climate-neutral and climate-resilient growth and to facilitate a just transition towards climate-neutrality, the Council statement reads.

Speaking separately, Kadri Simson, EU’s Energy Commissioner said in order to alleviate the current gas shortage and pricing crisis, the EU Commission will propose a reform of the gas market in context issues around storage and security of supply by the end of the year. The Commissioner announced this reform at the European Parliament plenary discussion about the ongoing gas crisis, where fears were raised that the climate neutrality transition might be derailed by this crisis given the extensive reliance on fossil fuels across the continent.

UK to Introduce AML (Economic Crime) Levy

The UK Government has published draft legislation introducing a special tax, anti-money laundering levy, charged on AML-supervised entities on basis of the size of the entity. The Government expects to raise £100 million per year from the AML-regulated sector to fund the Economic Crime Plan reforms. According to the legislation, AML-regulated entities with over £10.2 million in UK revenue will be liable to pay the levy, to be collected as of April 2023 by the public sector AML statutory supervisors: the tax administration (HMRC), Financial Conduct Authority and the Gambling Commission.

Professional bodies from the UK have argued that the levy should pay for the priorities under the Economic Crime plan and the money should be ring-fenced, to effectively counter-economic crime and that the cost should not only fall on firms supervised by the largest professional bodies.

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