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Historical Agreement on International Taxation Under OECD Auspices

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 With Ireland, Estonia and Hungary having withdrawn their objections, in a European context, the agreement now paves the way for implementation with instruments of EU law.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 13 October, G20 Finance Ministers endorsed the agreement, stating in its Communique that *"This agreement will establish a more stable and fairer international tax system. We call on the OECD/G20 Inclusive Framework on BEPS to swiftly develop the model rules and multilateral instruments as indicated in and according to the timetable provided in the Detailed Implementation Plan, with a view to ensure that the new rules will come into effect at global level in 2023."* The European Commission, via the Commissioner for the Economy, Paolo Gentiloni, released a press release welcoming the endorsement of the deal by the G20, and confirming the EU's intention to implement the agreement into EU law, stating *"Once the OECD has finalised the model rules for Pillar 2, the Commission will swiftly put forward a directive for its implementation in the EU. For Pillar 1, we will carefully examine whether a directive is needed to ensure its consistent and effective implementation at EU level."*

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.

Pandora Papers: Largest Ever Data Leak on Corruption & Illicit Assets

In October, the International Consortium of Investigative Journalists published details of an investigation carried out by over 600 journalists into the largest known data leak on the use of offshore companies, dubbed the Pandora Papers.

The leak comprises over 11 million files on the operations of 14 particular offshore service firms who facilitate the use of offshore companies. Individuals identified in the leak are accused of using offshore vehicles for concealing illicit assets. In the leak, over 900 companies in offshore havens have been linked to high-profile individuals and public officials, including country leaders, ministers, ambassadors and the like. Notably, former UK Prime Minister Tony Blair is identified as having purchased an offshore company which owned a London building valued at 6.5 million pounds, thereby avoiding paying hundreds of thousands in stamp duty. President Nicos Anastasiades of Cyprus is also tied to the leak, through a law firm he founded, which is accused of hiding assets of Russian billionaires. The current Czech Prime Minster is also identified as using an offshore company to purchase a USD $22 million dollar chateau in the south of France. The BBC, a partner in the investigations, reported on a number of other well-known wealthy individuals identified in the leak as follows:

- *the prominent Tory donor who was involved in one of Europe's biggest corruption scandals*

- *the King of Jordan's £70m spending spree on properties in the UK and US through secretly-owned companies*
- *Azerbaijan's leading family's hidden involvement in property deals in the UK worth more than £400m*
- *how the family of Kenyan president Uhuru Kenyatta's secretly owned a network of offshore companies for decades*

More information on the leaks can be found on the ICIJ website, the BBC website and The Guardian website.

Withholding Taxes - New EU System to Avoid Double Taxation

The European Commission this month published a Roadmap concerning a new EU system on withholding taxes, designed to avoid double taxation. The publication precedes a public consultation questionnaire which will also be launched in Q4 2021 on the Have Your Say website. The Commission Roadmap states that despite prior actions by the Commission *"tax barriers to cross-border investment and the risk of tax abuse persist within the European Union. One of these remaining barriers is the problem of inefficient withholding tax relief procedures. According to the most recent publicly available data from 2016 costs related to withholding tax refund procedures, foregone tax relief and opportunity costs are estimated to a value of EUR 8.4 billion annually. The Action Plan for fair and simple taxation supporting the recovery strategy proposes to introduce a common, standardised EU-wide system for withholding tax relief at source coupled with a new exchange of information and cooperation mechanism between administrations".*

The policy options that are currently being considered in relation to the intended proposal for a new EU system on withholding taxes includes:

***Option 1:** Improving withholding tax refund procedures to make them more efficient: This option entails the implementation of several measures, the objective of which is to simplify and streamline withholding tax refund procedures by making them quicker and more transparent.. These measures are not limited by but could include: the establishment of common EU standardised forms and procedures for withholding tax refund claims irrespective of the Member States concerned and the obligation to digitalise current paper based relief processes.*
***Option 2:** Establishment of a fully-fledged common EU relief at source system: This option entails the implementation of a standardized EU-wide system for withholding tax relief at source whereby the correct withholding tax rate, as provided in the DTC is applied at the time of payment by the issuer of the security, to the non-resident investor thereby not incurring double taxation.*
***Option 3:** Enhancing the existing administrative cooperation framework to verify entitlement to double tax convention benefits: This option envisages a reporting and subsequent mandatory exchange of beneficial owner-related information on an automated basis, to reassure both the residence and source country that the correct level of taxation has been applied to the non-resident investor.*

The Commission will launch a consultation in questionnaire in the coming months concerning the above policy options, via the Have Your Say website. Input will be invited over a 12 week period via the online portal.

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.

Register Now: CFE Conference on "Professional Judgment in Tax Planning" on 25 November 2021

Register now to secure your place for the 14th European Conference on Tax Advisers’ Professional Affairs, to be held virtually on Thursday, 25 November 2021 from 10:00AM to 12:00PM CET, on the topic of *"Professional Judgment in Tax Planning - An Ethics Quality Bar for All Tax Advisers".*

Speakers from a wide range of stakeholder perspectives will examine issues raised in the discussion paper published by CFE seeking to promote ethical professional judgment across all tax advisers in Europe, through the proposed “ethics quality bar” contained in the paper, based on five questions that all tax advisers should reflect on when undertaking their advisory role in the overall tax system. Panellists will consider whether the quality bar can help to steer all advisers in the direction of an appropriate balance between the rights and obligations of taxpayers, avoiding abusive planning.

Registration for the event is possible via this link. More details about the programme, line-up of speakers and registration will be available shortly.

OECD Publishes Country-by-Country & MAP Peer Review Reports

The OECD has issued a compilation of the 2021 peer review reports completed in line with Action 13 on Country-by-Country Reporting of the OECD/G20 BEPS Project, as well as the Stage 2 peer review monitoring reports of Action 14 of the BEPS Project on Mutual Agreement Procedure.

The compilation of Country-by-Country reporting covers 132 Inclusive Framework members and reviews the implementation of the Action 13 minimum reporting standards. The report notes that over 100 jurisdictions have legislation imposing filing requirements on MNEs, and that recommendations made in earlier peer review phases have largely been addressed. The report is completed on an annual basis, and the next update will be provided in Q3 of 2022.

Concerning Action 14 and the improvement of the tax dispute resolution mechanisms, the OECD has issued reports for the jurisdictions of Brazil, Bulgaria, China, Hong Kong (China), Indonesia, Russia and Saudi Arabia. The reports assess the efforts by the countries to implement the Action 14 minimum standard as agreed to under the OECD/G20 BEPS Project and recommendations contained in the Stage 1 peer review reports. All jurisdictions have signed the OECD MLI except Brazil, with Indonesia, Russia and Saudi Arabia having already ratified the instrument. All jurisdictions have either updated or introduced MAP guidance, and the majority have successfully decreased the time taken to close MAP cases or added additional personnel to their competent authorities dealing with MAP cases.

US, UK & EU Countries Agree Transitional Repeal of Unilateral Taxes

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Following the agreement reached by 136 jurisdictions on global minimum corporate tax and the partial reallocation of profit to market countries and endorsed by G20 Finance Ministers, Austria, France, Italy, Spain and the United Kingdom issued a joint statement with the United States, setting out an agreement reached for a transitional approach to walking back the existing unilateral digital taxes in those countries.

In the statement, Austria, France, Italy, Spain and the United Kingdom set out that they have agreed that the unilateral measures will remain in force until Pillar 1 is implemented, but that if the amount of tax collected in the jurisdictions exceeds the equivalent amount that would be due under Pillar 1 in the first full year of implementation, that the excess amount will be creditable against the portion of the corporate income tax liability associated with Amount A as computed under Pillar 1 in these countries, respectively. Further, the United States has also undertaken to terminate any proposed trade action and refrain from taking any further action against Austria, France, Italy, Spain, and the United Kingdom in relation to their unilateral digital taxes until the implementation of Pillar 1 takes place.

The agreement notes that although the United States had argued for a immediate withdrawal of unilateral measures, effective as of the date of the political agreement, i.e. 8 October 2021, the countries with unilateral digital taxes preferred for the withdrawal of these measures to come into effect upon implementation of Pillar 1.

Platform for Collaboration on Tax Publish 2021 Report

The Platform for Collaboration on Tax, a collaborative project of the IMF, OECD, UN and the World Bank, has issued its 2021 report examining the activities undertaken by the Platform in the past year across five focus areas, including: medium-term revenue strategies, COVID-19, tax and sustainable development goals, international taxation, and co-ordination.

The report demonstrates that the Platform increased support to countries during the COVID-19 pandemic in the areas of domestic resource mobilisation, release of joint knowledge products, technical assistance concerning tax-related responses to the crisis, and workshops on critical issues. The Platform also published two toolkits on Transfer Pricing Documentation and Tax Treaty Negotiations and held a number of workshops and virtual consultations concerning these toolkits. The Platform also collaborated with the African Tax Administration Forum and the Asian Development Bank to host a series of workshops on the reform of tax systems.

As part of its future activities, the Platform aims to concentrate on identifying new priorities where its collaboration can be of most value, hold further events on the link between tax and the sustainable development goals, improve resources on the Platform's website and expand engagement with partner countries concerning the available toolkits.

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.

OECD Report on Carbon Pricing in Times of COVID-19

As part of the UN Climate Change Conference 2021, COP26, the OECD has published a report entitled *Carbon Pricing in Times of COVID-19: What Has Changed in G20 Economies?* The report reviews how countries can convert long-term climate goals into "concrete policy packages that deliver the necessary transformational change". The report examines how carbon pricing can play a significant role in meeting climate goals and assist in the green recovery. Additionally, the report reviews the evolution of carbon prices in G20 countries between 2018 and 2021 and estimates carbon pricing resulting from carbon taxes, emissions trading systems, and fuel excise taxes.

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.

Further to the OECD report, the OECD is hosting a virtual event taking place within the COP26 virtual pavilion, No Time to Rest, which will examine stepping up carbon pricing efforts to meet climate goals. The event will take place on 3

November 2021 from 4:00 - 5:00pm. Those interested in participating in the event can register via this link.

The selection of the remitted material has been prepared by:

Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia