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Commission Gentiloni Outlines European Commission Tax Plans for 2022

In an exchange of views with the Subcommittee on Tax Matters of the European Parliament on 30 November, Commission Gentiloni set out the upcoming tax priorities for the European Commission as it enters the second half of its mandate on 1 January 2022.

Commissioner Gentiloni confirmed that implementation of the OECD two-pillar agreement was the number one priority of the Commission, and that a proposal for Pillar 2 would be tabled before the end of the year. He stated that ECOFIN were expected to have their first discussion on the file at its January meeting, with agreement to be pushed for as soon as possible by the French Presidency

of the Council of the EU. He stressed that receiving Parliament's opinion quickly would be key to ensuring adoption takes place in time for rules to come into force in 2023 as planned.

Commissioner Gentiloni also confirmed that once work by the OECD on the text of the multilateral convention for Pillar 1 is more advanced, the Commission will progress its own work in implementing the rules. In the interim the EU digital levy plans will remain on hold, said the Commissioner.

Commissioner Gentiloni also outlined the following as key priorities for 2022:

- A proposal on fighting the use of shell entities to ensure that entities with no/minimal presence do not benefit from tax advantages in the EU - expected to be adopted in early 2022;
- A "more robust approach for zero tax jurisdictions in the context of the EU list of non-cooperative jurisdictions", noting that the EU expects the OECD Global Forum on harmful tax practices and the OECD Inclusive Framework to propose an international response to this issue;
- Reforming the mandate of the Code of Conduct Group to fight measures leading to double non-taxation or double or multiple tax benefits, noting that although two Member States, Hungary and Estonia, continue to oppose revisions, an agreement is expected soon, and potentially this year;
- A proposal to "improve public transparency around the effective tax rate paid by large companies in the EU" which will make use of the method agreed under Pillar 2 for minimum taxation;
- A proposal to revise the EU directive on administrative cooperation to extend to crypto-assets;

- A proposal for a debt-equity bias reduction allowance: DEBRA, to redress imbalance by ensuring a better balance between the treatment of debt and equity for tax purposes.

Commissioner Gentiloni stated that further reform to the EU tax system is on the agenda for 2023, when the Commission will put forward its proposals for so-called BEFIT initiative: a plan for a holistic EU business tax framework fit for the decades to come.

A recording of the meeting is available here.

Public Country-by-Country Reporting Directive Published in the Official Journal of the EU

The Directive on Public Country-by-Country Reporting, Directive 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, has now been published in the Official Journal of the European Union on 1 December.

The Directive will accordingly enter into force on 21 December, and Member States will thereafter have 18 months to implement the directive into domestic legislation. Reporting obligations will apply from mid-2023.

EU VAT Committee Publishes Updated Guidelines

The European Commission's VAT Committee, formed of representatives from Member States and the Commission to promote the uniform application of the

provisions of the VAT Directive, has now published updated guidelines following from its 118th meeting which took place on 19 April. The guidelines are of an advisory nature only and are not binding on the Commission or Member States.

The new guidelines concern the following matters:

- Quick Fixes: Return of goods placed under call-off stock arrangements, and the moment when the goods are considered as returned and accounting methods to determine which goods are returned;
- Calculation of the EU place-of-supply threshold for taxable persons making supplies of intra-Community distance sales of goods and supplies of telecommunications;
- Broadcasting and electronic services to non-taxable persons: the decision in Case C-568/17, *Geelen*, on interactive sessions filmed and broadcasted in real time via the internet;
- VAT rules applicable to transactions related to the recharging of electric vehicles; and
- VAT related issues in view of the withdrawal of the UK from the EU.

The guidelines can be found here.

Commission Takes Action Against Members States for Failing to Implement Requirements for Regulated Professions

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The Commission has commenced infringement proceedings against 18 Member States (Austria, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden), for failing to properly

implement requirements for assessing the proportionality of new regulation of professions.

Following a review of the national transposition measures of the 2018 directive, the Commission identified the following as the most significant issues across the Member States:

- failure to sufficiently capture all types of regulations such as those adopted by professional associations.
- failure to accurately transpose the criteria of the proportionality test, such as the need to ensure necessity of the new regulation in view of other rules already in place.
- failure to ensure the necessary procedural guarantees, such as objectivity of assessments, effective ex-post monitoring mechanisms, and effective information and involvement of stakeholders.

All Member States concerned have two months to respond to the arguments raised by the Commission. Otherwise, the Commission may decide to send them a reasoned opinion.

Also in the December infringement package, the Commission sent a reasoned opinion to Belgium, calling on it to amend its national legislation transposing the EU Anti-Tax Avoidance Directive concerning controlled foreign company rules, for failing to allow taxpayers to deduct tax paid by a controlled foreign company in the state of tax residence. The Commission also sent a reasoned opinion to Luxembourg for granting a derogation of the measures limiting the deductibility in the corporate tax base of interest payments in favour of financial undertakings to securisation entities under its domestic implementation of the EU Anti-Tax Avoidance Directive.

The Commission additionally sent two reasoned opinions to Cyprus for failing to

notify the measures for the transposition into national law of the VAT e-commerce Directives and to Germany for failing to fulfil its obligation to grant other Member States automated access to the information concerning call-off stock arrangements via the electronic system VIES.

Finally, the Commission also sent a reasoned opinion to Sweden for its taxation of dividends to non-resident public pension institutions, for less favourable treatment as compared with similar distributions in purely domestic situations, which infringes the free movement of capital.

EU Commission 2021 VAT Gap Report Published

The European Commission has now published the 2021 VAT Gap in the EU Report, analysing data on collection revenue from 2019. The report showed an amount of €134 billion in Value-Added Tax (VAT) was lost by the Member States in 2019 as a result of VAT fraud and evasion, VAT avoidance and optimisation practices, bankruptcies and financial insolvencies, as well as miscalculations and administrative errors. However, this figure had decreased by around €7 billion compared to 2018.

Paolo Gentiloni, Commissioner for Economy, said of the report: *"Despite the positive trend registered in the last few years, the VAT Gap remains a major concern – particularly in view of the immense investment needs our Member States must address in the coming years. This year's figures correspond to a loss of more than €4,000 per second. These are unacceptable losses for national budgets, and mean that ordinary people and businesses are left to pick up the shortfall through other taxes to pay for vital public services. We need to make a joint effort to crack down on VAT fraud, a serious crime that takes money out of consumers' pockets, undermines our welfare systems and*

depletes government coffers.”

The Commission will launch legislative proposals to further modernise the VAT system, including the reinforcement of Eurofisc, a network comprised of national officials from the 27 Member States and Norway. The network use a Transaction Network Analysis tool, financed by the EU, to exchange information on VAT, aiding in the fight against VAT fraud in the EU.

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