



BRUSSELS | MARCH 2022

Pillar 2 Directive: Poland and Estonia Maintain Veto Ahead of ECOFIN Council Meeting

EU Finance Ministers met on 15 March at the Council of the EU's Economic and Financial Affairs Council configuration. At the meeting, significant progress was made in relation to the EU Directive on the implementation of the OECD's Pillar 2 minimum corporate income tax.

A [revised compromise text](#) published ahead of the meeting revealed some notable changes from the original proposal, the most significant of which being that the time limit for transposition has been changed to 31 December 2023, instead of 31 December 2022. Under the current compromise text, the Directive would apply for fiscal years beginning 31 December 2023, instead of from the start of 2023. The Undertaxed Profits Rule would then accordingly

apply from 31 December 2024. The revised compromise text also includes a provision that Member States with no more than 10 ultimate parent entities of groups in scope of the Directive can elect not to apply the Undertaxed Payments Rule and Income Inclusion Rule until the end of 2025.

Although progress has been made towards agreeing the draft Directive, certain Member States called for further delay for the transposition and more lenient conditions for the option to elect not to apply the Undertaxed Payments and Income Inclusion Rules. French Finance Minister, Bruno Le Maire, said of the discussions, *"We have made major progress on the minimum taxation directive. An agreement is within reach to end the race to the bottom. Multinational companies will have to pay a minimum of 15% of taxes worldwide"*.

A recording of discussions on the proposal can be viewed [here](#). Discussions will continue at the ECOFIN meeting on 5 April, with the French presidency expecting a compromise to be reached. Poland and Estonia, however, still maintain their veto over the proposal.

OECD: Globe Model Rules Update & Guidance

The OECD has now published a detailed technical [Commentary](#) and [Illustrative Examples](#) setting out guidance on the operation and intended outcomes of the [Global Anti-Base Erosion Rules](#).

Speaking concerning the commentary, Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration, said: *"The release of the Commentary today is a significant achievement which concludes many months of hard work by Inclusive Framework members in reaching a detailed*

agreement on the substantive provisions of the GloBE Rules. With the completion of the technical work on the Model Rules and Commentary, Inclusive Framework members now have all the tools they need to begin implementing the rules."

The next steps in the OECD's [two-pillar solution](#) to reform the international tax framework in response to the challenges of digitalisation of the economy is to develop the Implementation Framework needed for the Detailed Implementation Plan. The OECD has accordingly also now launched a consultation concerning the Implementation Framework, focusing on the following questions:

- Do you see a need for further administrative guidance as part of the Implementation Framework? If so, please specify the issues that require attention and include any suggestions for the type of administrative guidance needed.
- Do you have any comments relating to filing, information collection including reporting systems and record keeping? In particular do you have any views on how the design of the information collection, filing obligations and record keeping requirements under GloBE could be designed to maximise efficiency, accuracy and verifiability of information reporting while taking into account compliance costs?
- Do you have any suggestions on measures to reduce compliance costs for MNEs including through simplifications and the use of safe-harbours?
- Do you have views on mechanisms to maximise rule co-ordination, increase tax certainty and avoid the risk of double taxation?

Input is being welcomed by the OECD until 11 April 2022. The input should be in electronic format (Word documents) and submitted via e-mail to taxpublicconsultation@oecd.org, to the attention of: International Co-operation and Tax Administration Division, OECD/CTPA.

A public consultation meeting will follow at the end of April 2022.

EU Agreement on Carbon Border Adjustment Mechanism

On 15 April, EU Finance Ministers at the Council of the EU's Economic and Financial Affairs Council meeting reached [agreement](#) on the [Carbon Border Adjustment Mechanism](#) (CBAM).

The EU proposal aims to level the playing field by targeting imported goods from countries which do not apply the same standards as Europe, thus preventing carbon leakage. To do so, the Directive aims to put a price on carbon-intensive imports, such as steel, electricity and fertilisers, thus encouraging trade partners to implement similar green policies at home. As a result, global reduction of carbon emissions could be achieved simultaneously.

The Directive also foresees a registry of CBAM declarants (importers) centralised at EU level, as well as a minimum threshold which exempts importers from obligations where goods have a value of less than €150, in order to reduce administrative complexity.

French Finance Minister, Bruno Le Maire, said of the agreement, *"The agreement in the Council on the Carbon Border Adjustment Mechanism is a victory for European climate policy. It will give us a tool to speed up the decarbonisation of our industry, while protecting it from companies from countries with less ambitious climate goals. It will also incentivize other countries to become more sustainable and emit less. Finally, this mechanism responds to our European ambitious strategy that is to accelerate Europe's*

energy independence."

Although agreement has been achieved on the wording of the CBAM, work on closely related aspects under the Emissions Trading Scheme Directive, such as the phasing-out of allowances to industry sectors and solutions for limiting carbon leakage must first be achieved. Once progress of these matters has been made at Council level, the file will thereafter be progressed to the European Parliament for negotiations.

Registration Open: CFE Forum 2022 on 12 May 2022 in Brussels

CFE Tax Advisers Europe's [2022 Forum](#) will be held on 12 May 2022 in Brussels on the topic of "*The Future of Holding Companies & VAT Grouping in the Current Tax Policy Climate*". The conference will examine issues surrounding the European Commission's Unshell Proposal and how policy developments affect the use of holding companies and VAT groups across tax structures.

Speakers from a wide range of stakeholder perspectives will examine issues raised by the Commission's proposal, legitimate uses of holding companies, and problems with the divergence in approaches throughout the EU on VAT grouping.

More details about the programme, line-up of speakers and the registration link for the event is available [here](#).

EU Reviews Tax Blacklist

The Council of the EU [reviewed](#) its List of Non-Cooperative Jurisdictions for Tax Purposes ("Blacklist"). No jurisdictions were added to the list during the review.

The following jurisdictions remain on the Blacklist: American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu. The state of play in Annex II of the Blacklist also details steps taken by various jurisdictions to undertake reforms in order to comply with tax good governance standards. More detail on this can be found in the Code of Conduct (Business Taxation) [report](#) to the Council of the EU. The Blacklist is reviewed twice per year, and will next be reviewed in October 2022.

EU to Extend VAT Reverse Charge Mechanism

The European Commission has published a [draft proposal](#) to extend the application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud. The draft Directive proposes to extend the application of the mechanism until the end of 2055.

The Explanatory Memorandum to the Directive notes that negotiations in the Council concerning the definitive VAT system are ongoing, and that it will not be possible for the system to enter into force by July 2022, and that an extension until the end of 2055 is required to allow for the negotiations and to prolong the anti-fraud measures.

Input can be provided on the proposal to extend the mechanism's application, via the [Have Your Say portal](#), until 7 April 2022.

OECD: Public Consultation on Crypto-Assets

The OECD has now published a [public consultation document](#) concerning amendments to the Common Reporting Standard (CRS) and a new global tax transparency framework to provide for the reporting and exchange of information with respect to crypto-assets. According to the OECD, the new framework will cover the collection and exchange of tax-relevant information between tax administrations, with respect to persons engaging in crypto-transactions. It is proposed that individuals and entities that provide services to exchange crypto-assets against other crypto-assets apply the due diligence procedures to identify their customers, and then report the aggregate values of the exchanges and transfers for such customers on an annual basis to revenue administrations.

Input is being welcomed by the OECD by 29 April 2022 via e-mail (in Word format) to taxpublicconsultation@oecd.org. A public consultation meeting will follow at the end of May 2022.

OECD Transfer Pricing Country Profiles Updated

The OECD has published its [3rd batch of the 2021/2022 updated transfer pricing profiles](#), covering 28 jurisdictions. The profiles were updated for Brazil, Canada, Chile, China, Croatia, Dominican Republic, Estonia, Finland, Greece, Hungary, Israel, Korea, Liechtenstein, Lithuania, Luxembourg, Malta, Panama, Portugal, Slovenia, the United Kingdom, Uruguay and the United States, and 6 new country profiles were added for Honduras, Iceland, Jamaica, Papua New Guinea, Senegal and Ukraine. 91 jurisdictions have now been covered in the transfer pricing country profiles.

The profiles set out *"information on countries' legislations and practices*

regarding the transfer pricing aspects of financial transactions and the application of the Authorised OECD Approach (AOA) on the attribution of profits to permanent establishments. In addition, the country profiles reflect updated information on a number of transfer pricing aspects such as methods, comparability, intra-group services, cost contribution agreements, transfer pricing documentation and administrative approaches to prevent and resolve disputes".

The first and second batches of the updated profiles were published in [August](#) and [December](#) 2021, respectively.

New FATF Anti-Money Laundering Standards

The Financial Action Task Force (FATF) updated its [Recommendations](#) to add new definitions of "nominator" and "nominee shareholder or director", to strengthen the standards on beneficial ownership of legal persons, and recommended governments set up beneficial ownership registers where this is not already in place. These measures would [reportedly](#) be of use in identifying assets targeted by sanctions introduced by the international community following the Russian invasion of Ukraine.

Other changes to the FATF Recommendations include:

- Combating the financing of the proliferation of weapons of mass destruction through the consistent implementation of targeted financial sanctions when these are called for by the UN Security Council.
- Improved transparency to make it harder for criminals and terrorists to conceal their identities or hide their assets behind legal persons and arrangements.

- Stronger requirements when dealing with politically exposed persons (PEPs).
- Expanding the scope of money laundering predicate offences by including tax crimes.
- An enhanced risk-based approach which enables countries and the private sector to apply their resources more efficiently by focusing on higher risk areas.
- More effective international cooperation including exchange of information between relevant authorities, conduct of joint investigations, and tracing, freezing and confiscation of illegal assets.
- Better operational tools and a wider range of techniques and powers, both for the financial intelligence units, and for law enforcement to investigate and prosecute money laundering and terrorist financing.

FATF is the global standard-setter for measures to combat money laundering, terrorist financing, and financing of proliferation. It is an intergovernmental organisation with 36 members and with the participation of over 180 countries through its global network.

Review of EU Economic Governance Framework

The European Commission published the [review](#) of the European Union economic governance framework. The report reviews the responses to eleven open-ended questions on different aspects of the EU economic governance from 25 different countries, including 21 EU Member States and four non-EU countries. The report notes that Member states' fiscal rules should become more growth-friendly, mindful of social issues, and support the policy priorities for the green and digital transition. The respondents contend the main goal of EU fiscal rules should be to support the resilience of EU economies with

respect to external shocks and debt sustainability, as well as support of green investment and climate challenge. A large number of the survey participants call for simplification, transparency and stronger national ownership of the fiscal rules. The report also notes the need for a longer-term perspective on ever-changing EU fiscal framework and to reduce the reliance on complex indicators over which governments have no direct control.

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