



**BRUSSELS | 19 DECEMBER 2022**

## **EU Adopts Minimum Tax Directive**

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The European Union [formally adopted](#) the directive on minimum taxation of multinational groups, after Poland granted its consent in the formal written procedure on 15 December and Hungary agreed to support the Commission proposal on 12 December, under auspices of the Czech Presidency of the EU.

As such, the adoption makes the European Union a leader in the international adoption of the OECD/ G20 agreed Pillar Two, which aims to introduce 15% minimum taxation for international groups via complex mechanisms of international tax law. On adoption, EU ministers reaffirmed the commitment to the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy and invited all members of the OECD/G20 Inclusive Framework on BEPS to live up to their commitment on both pillars.

The Czech Finance Minister, Zbyněk Stanjura, currently chairing the Council said: *"I am very pleased to announce that we agreed to adopt the directive on the Pillar 2 proposal today. Our message is clear: The largest groups of corporations, multinational or domestic, will need to pay a corporate tax that cannot be lower than 15%, globally."*

The European Commission also [welcomed](#) the Council adoption, calling it a win for fairness and a win for diplomacy.

Member states must implement the Directive by 31 December 2023. It will apply to NMEs and domestic groups with a combined financial revenue of over 750 million Euro per year.

## EU Progressed Landmark Agreement on Carbon Leakage Prevention

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The European Parliament and the Council [agreed](#) last week on progressing the Carbon Border Adjustment Mechanism (CBAM) agreement, which is a climate policy measure aimed at preventing the risk of carbon leakage thus protecting the Single Market from the effects of distortive and carbon-intensive imports. In order to become EU law, the CBAM proposal must be formally adopted by the co-legislators, the European Parliament and the Council.

The proposal aims to reinforce efforts to reduce greenhouse gas emissions of the EU and prevent relocation of production to non-EU countries with lax climate policy, thus preventing imports of carbon-intensive products.

Commenting, the Czech Industry and Trade Minister, Jozef Sikela, currently presiding with the Council said: *"I am very pleased that we reached this agreement today."*

*The Carbon Border Adjustment Mechanism is a key part of our climate action. This mechanism promotes the import of goods by non-EU businesses into the EU which fulfil the high climate standards applicable in the 27 EU member states. This will ensure a balanced treatment of such imports and is designed to encourage our partners in the world to join the EU's climate efforts."*

For its part, the European Commission also welcomed the provisional agreement: "*The Commission welcomes the political agreement reached this morning between the European Parliament and the Council on the [Carbon Border Adjustment Mechanism \(CBAM\)](#). The CBAM is the EU's landmark tool to put a fair price on the carbon emitted during the production of carbon intensive goods that are entering the EU, and to encourage cleaner industrial production in non-EU countries. Today's agreement will be complemented by the revision of the Emissions Trading System (ETS), with negotiations taking place later this week, and that will align the phase-out of the allocation of free allowances with the introduction of CBAM to support the decarbonisation of EU industry."*

## OECD Publishes 2021 Peer Review Reports on the Exchange of Information on Tax Rulings

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The OECD has now published the [2021 Peer Review Reports on the Exchange of Information on Tax Rulings](#), which sets out information in relation to 131 jurisdictions on the compulsory spontaneous exchange of information on tax rulings. It is the 6<sup>th</sup> annual peer review report which sets out progress on the implementation of BEPS Action 5, the Minimum Standard on Tax Rulings.

According to the OECD, the “*new peer review results also show that 73 jurisdictions are fully in line with the BEPS Action 5 minimum standard, with the remaining 58 jurisdictions receiving a total of 61 recommendations to improve their legal or operational framework to identify the relevant tax rulings and exchange information.*”

Further information is available [here](#).

## CFE Opinion Statement on Case C-538/20 (W AG): Foreign Final Losses

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CFE has issued an [Opinion Statement](#) on the ECJ decision of 22 September 2022 in Case C-538/20, *W AG*, on the deductibility of foreign final losses.

At issue in *W AG* was the ability of a German company to deduct the final losses which it had incurred in its UK permanent establishment (PE) because Germany as the State of residence had waived its power to tax the profits (and losses) of that PE under the Germany/UK tax treaty. The CJEU ruled that when the State of residence refrained from exercising its power to tax the profits (and losses) of the foreign PE under a double tax treaty, the situation of a company with a foreign PE was not objectively comparable to the situation of a company with a domestic PE. As such, there was no different treatment of comparable situations and as a corollary, no breach of the freedom of establishment.

CFE acknowledges the different views on the CJEU’s “final loss” doctrine previously established in *Lidl Belgium* for treaty-exempt permanent establishments, but also notes that the reasoning of that case has been implicitly renounced by the Court in *Timac Agro* and in *W AG*.

The *W AG* decision makes it clear that comparability should be examined differently depending on whether the exemption is granted by domestic or tax treaty law. The CFE ECJ Task Force has reservations regarding this distinction. For the taxpayer, exemption has the same economic effects regardless of whether is adopted through domestic law or tax treaty law. Moreover, *W AG* departs from the Court’s reasoning and thinking in *Lidl Belgium*, which also concerned Germany and the same rules. Ideally, the Court would have made this explicit. Finally, it remains to be seen if *Marks and Spencer* is still “good law” or if *W AG* was one of the final nails in the coffin of the “final loss” doctrine.

We invite you to read the [statement](#) and remain available for any queries you may have.

## OECD Releases Update on 2022 Tax Database

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The OECD has now published a document summarising the updated [2022 Tax Database Key Tax Rate Indicators](#).

The document presents comparative information on a range of statutory tax rates and tax rate indicators in OECD countries, encompassing personal income tax rates and social security contributions, corporate income tax rates and value added taxes.

Further information and the data summarized in the 2022 update document can be accessed [here](#).

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