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EU Summary Report on Tax Enablers (SAFE) Consultation

The European Commission has published a summary report of the stakeholder responses to the public consultation on the need to secure the activity framework of enablers of aggressive tax planning (SAFE). The document sets out a disclaimer that "the report cannot in any circumstances be regarded as the official position of the Commission or its services nor be considered as a representative sample of the views of the EU population."

CFE recommended no additional legislative action be taken by the Commission until the recently commenced evaluation and analysis of DAC has been completed. In this regard, CFE notes the independent study commissioned by the European Parliament, Permanent Committee on Taxation (FISC), which identified that the impact of recent EU regulations on tax compliance across the Single Market remains uncertain, given that most intermediary regulations such as DAC 6 have been implemented quite recently.

Tax advisers play a very significant role in supporting the functioning of the tax system by assisting taxpayers to interpret complex tax laws, to meet their compliance obligations and engage with tax authorities in relation to disputes. Onerous due diligence obligations will add another layer of compliance on intermediaries resulting in increased cost for taxpayers and potentially making tax advice a “luxury product” which will leave many taxpayers unable to access professional tax advice at a reasonable cost. It will create an unlevel playing field between taxpayers and well- resourced tax authorities which would be contrary to the intrinsic right of defence

To move forward in this very important area, CFE has set out sensible measures in our discussion paper on ‘Ethics Quality Bar for All Advisers’. This paper sets out a framework to help steer all advisers in the direction of an appropriate balance between the rights and obligations of taxpayers, thereby raising standards in tax advice and reducing incentives for aggressive tax avoidance

The results of all consultation activities will be included in the synopsis report annexed to the impact assessment. The European Commission will further analyse the replies to the public consultation in order to integrate a broad range of views expressed by stakeholders in the draft legislative proposal and its impact assessment.

OECD Guidance on Minimum Tax - Pillar 2

The OECD has published technical guidance for implementation of Pillar 2, the global minimum tax agreement. The Guidance will be incorporated into the Commentary on Pillar 2 issued in March 2022.

The latest guidance identifies the US GILTI rules as a blended CFC regime for purposes of the OECD Globe rules, and sets out the modality of allocation of taxes under such a blended regime. A blended CFC tax regime aggregates income, losses, and creditable taxes of all the CFCs for the purposes of calculating the shareholder's tax liability under the regime and that has an applicable rate of less than 15%.

The original proposal of President Biden to US Congress envisaged increase of the GILTI rate and country-by-country/ jurisdictional application in order to bring it in line with the agreement reached at OECD level. With the passing of the Inflation Reduction Act (IRA), US Congress rejected Biden's proposal to bring GILTI in conformity with Pillar 2, with Congress Republicans and notably the Democratic Senator Joe Munchin citing fears of loss of revenue for US corporations to Europe and rest of the world.

CFE Opinion Statement on EU Corporation Taxation System (BEFIT) Consultation

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The CFE has issued an Opinion Statement on the European Commission Public Consultation on the Introduction of a New Corporate Taxation System in Europe (BEFIT). The European Commission's plans to overhaul Europe's business taxation rules by introducing a single corporate tax rulebook, known as the Business in Europe: Framework for Income Taxation ("BEFIT"), merits a thorough dialogue with all involved stakeholders and Member states.

Given the degree of difficulty in finding a common ground concerning the reform of EU corporate taxation, our response does not necessarily represent the view of each and every Member Organisation of CFE, although reasonable efforts have been made to provide a coherent and representative view of European tax institutes and associations of tax advisers.

CFE Tax Advisers Europe recommends that the following factors are taken into consideration by the European Commission:

- BEFIT would represent a fundamental shift in the corporate tax landscape, and CFE would encourage the European Commission to defer further consideration of BEFIT until the rules for the implementation of Pillar Two have had sufficient time to be operational in practice. Only then should the European Union proceed with a process to analyse whether BEFIT would provide a benefit to tax authorities and MNEs.
- The Commission should take into account the subsidiarity principle of EU law and conduct a thorough quantitative and qualitative assessment of the impact of investment and revenue for all Member states, including sustainable revenue for the EU budget.
- Taxpayers have invested heavily over the last number of years to ensure that they comply with OECD Transfer Pricing requirements. The European Commission has not provided a rationale for moving away from that approach.
- The system will not eliminate the Arm’s Length Principle (“ALP”) and transfer pricing as we know it; it will only apply within the EU for the companies coming within the ambit of the legislation. MNEs will still be subject to traditional transfer pricing rules outside of the EU. This will create a two-tier system, which will lead to increased complexity and compliance costs for companies and tax authorities.
- The proposed ‘risk-based’ approach to transfer-pricing does not address these concerns, and instead focuses on one non-traditional transfer-pricing method, which might be controversial from the perspective of policy and practice.

- The BEFIT proposal envisages that tax authorities would operate two different tax systems in parallel, which would not meet the stated objective of administrative simplification.
- In addition to tax authorities, a two-tier system could increase the administrative burden for companies balancing on the 'application edge' of the BEFIT rules – i.e. if local non-BEFIT rules and BEFIT rules would deviate to a large extent, it would make moving from one system to another difficult for taxpayers (such as an SMEs).
- If BEFIT rules would be introduced, it would not be just a one-off transition from current system(s) to the new BEFIT era. Going forward there would be a number of taxpayers balancing between the two systems each year.
- If there is an objective to prevent certain companies from abusing the ALP and the transfer-pricing provisions, certain provisions must be included to deter MNEs from engaging in formula-factor manipulation.

CFE and its Member Organisations stand ready to assist the Commission in considering the issues above in the course of the policy dialogue and public consultation.

We invite you to read the statement and remain available for any queries you may have.

EU Publishes Green Deal Industrial Plan

The European Commission has published the anticipated green industrial strategy, Europe's response to the US 'protectionist' green subsidies law enacted with the Inflation Reduction Act (IRA). The plan is based on a number of measures aimed at supporting Europe's net-zero industry and the transition to climate neutrality.

Similar to the US IRA, the EU intends to provide for tax breaks for the European industry focused on production of renewable such as hydrogen, on basis of an auction to be launched later in 2023. In addition, the temporary State Aid framework, enacted during the Covid pandemic, will allow for tax benefits to support new investment into industrial facilities with a clear green impact, i.e. in the strategic net-zero sectors. The EU will also facilitate the use of existing EU funds for financing clean tech innovation, manufacturing and deployment.

Commenting, President of the European Commission Ursula von der Leyen, said of the new measures: *“We have a once in a generation opportunity to show the way with speed, ambition and a sense of purpose to secure the EU's industrial lead in the fast-growing net-zero technology sector. Europe is determined to lead the clean tech revolution. For our companies and people, it means turning skills into quality jobs and innovation into mass production, thanks to a simpler and faster framework. Better access to finance will allow our key clean tech industries to scale up quickly.”,* President von der Leyen said.

Save the Date: CFE Forum - 20 April 2023 - *"Towards a More Cohesive European Fiscal Union? Minimum Tax & VAT in the Digital Age"*

Save the date for CFE Tax Advisers Europe’s 2023 Forum, which will be held on 20 April 2023 in Brussels on the topic of *"Towards a More Cohesive European Fiscal Union? Minimum Tax & VAT in the Digital Age"*. The Spring CFE General Assembly and Technical Committee meetings will also be held in Brussels the following day, on Friday 21 April 2023.

More details about the programme, line-up of speakers and the registration link for the event will be made available in due course.

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