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Anticipated EU Tax Developments in 2023

To mark the 2023 rentrée, Director-General for Taxation and Customs Union at the European Commission, Gerassimos Thomas, issued a newsletter setting out some of the more notable EU tax policy developments to track this year.

The newsletter sets out the following files to watch in 2023:

- In March 2023, the Commission will table a proposal for reform of the EU Customs Union seeking to strengthen its integrity by more effectively enforcing EU rules and standards at external border for goods;
- The much-anticipated BEFIT proposal will be unveiled, with a view to reducing remaining obstacles for cross-border investment in the Single Market as part of a broader effort to accompany the EU's economy

through the twin digital and green transition and reforming and simplifying business taxation within the EU;

- A proposal seeking to implement the Pillar 1 global tax deal into EU law will be introduced once sufficient progress has been made at international level;
- A legislative initiative to clamp down on enablers of tax abuse will be introduced;
- A proposal to improve withholding tax relief procedures for cross-border businesses in the EU will be introduced.

Other proposals under negotiation at Council level to watch in 2023 include:

- VAT in the Digital Age proposals - seeking to align VAT rules with the digital economy and simplify VAT registration and e-invoicing throughout the EU;
- DAC8 proposal - seeking to increase reporting and transparency requirements for crypto-assets and transactions;
- Unshell proposal - seeking to reduce the use of shell companies in the EU.

In the newsletter, Mr Gerassimos notes that the Pillar 2 Directive on minimum effective tax rates in the EU was agreed in late December. Member states have until the end of 2023 to transpose the Directive into national legislation. Gerassimos in the newsletter states that the directive *"will undoubtedly have a lasting effect on base erosion and profit shifting, and enhance the fairness of taxation globally".*

In relation to the Carbon Border Adjustment Mechanism (CBAM), also agreed in late December, Gerassimos said that *"CBAM is the first of its kind in the world. It will put a fair price on the carbon emitted during the production of carbon intensive goods that are entering the EU, and thereby reduce the risk of carbon leakage while encouraging cleaner industrial production in non-EU* *countries."*

Also of note for 2023, EU Member states by the end of June must implement Directive 2021/2101 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches, better known as Public Country-by-Country Reporting.

OECD Appoints New Director of Centre for Tax Policy & Administration

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The OECD has appointed Ms. Manal Corwin as the new Director of its Centre for Tax Policy and Administration, taking over the role from Pascal Saint-Amans, who served as Director for 12 years.

Manal Corwin is presently the Partner-in-charge of the National Tax Office and Lead Director of the Board of Directors for KPMG, LLP in the United States and previously worked in the Office of Tax Policy in the US Department of Treasury as Deputy Assistant Secretary for International Tax Affairs, working on Base Erosion and Profit Shifting initiative and headed up the US delegation for various tax treaty negotiations. As delegate to the OECD Committee on Fiscal Affairs, Ms Corwin also participated on the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, the Forum on Harmful Tax Practices, the Report on the Transfer Pricing Aspects of Business Restructurings, and the launch of the work to address aggressive tax planning.

Ms Corwin will take up her duties from 1 April 2023, relieving Grace Perez-Navarro, who served in the role on an interim basis after Pascal Saint-Amans' departure and who will retire at the end of March 2023.

ECOFIN: Swedish Presidency Priorities

At the first meeting of the Economic and Financial Affairs Council for 2023, Finance Ministers discussed the priorities for the Swedish Presidency of the Council of the European Union from 1 January until 30 June 2023. The Swedish Presidency priorities as concerns taxation are as follows:

A review of the Energy Taxation Directive is under way, as the current directive is outdated and is not coordinated with other EU measures. The Presidency will continue discussions in the Council. The Presidency will also continue the work on the proposal for new VAT rules for the digital age.

In the area of direct taxation, priority will be given to measures aiming to prevent tax evasion, tax avoidance, aggressive tax planning and harmful tax competition, such as updating the EU list of non-cooperative jurisdictions. In addition, the Presidency will work to ensure greater tax transparency and to reinforce the exchange of relevant information within the EU. The Presidency stands ready to advance the work on further strengthening EU administrative cooperation on taxation.

In the financial area, the Presidency will seek to continue the fight against international crime by advancing the efforts to tackle money laundering and the financing of terrorism. This will involve advancing the negotiations on establishing a new EU body in this area and on the 'rulebook'.

Ministers also discussed the economic and financial impact of Russia's aggression against Ukraine and the Recovery and Resilience Facility.

Updated OECD Pillar 1 & 2 Analysis

Last week, the OECD published an update on the economic impact assessment of the Two-Pillar Solution, based on updated analysis using data and recently agreed design features of the two-pillar solution which was not accounted for in previous studies/analysis.

The new analysis anticipates annual global tax revenue increases of around USD 220 billion due to the proposed global minimum tax from Pillar 2 implementation, a significant increase from prior estimates. Pillar One is expected to result in around USD 200 billion in profit reallocation to market jurisdictions on an annual basis, an increase in global tax revenue of around 13-36 USD billion. Low and middle-income countries are expected to benefit from the most significant increases in corporate income tax revenue.

OECD Secretary-General Mathias Cormann said of the new analysis: *"The international community has made significant progress towards the implementation of these reforms, which are designed to make our international tax arrangements fairer and work better in a digitalised, globalised world economy. This new economic impact analysis again underlines the importance of a swift, efficient and widespread implementation of these reforms to ensure these significant potential revenue gains can be realised. Widespread implementation will also help stabilise the international tax system, enhance tax certainty and avert the proliferation of unilateral digital services taxes and associated tax and trade disputes, which would be bad for the global economy and economies around the world."*

EU Consultation on VAT Package for Travel & Tourism

The European Commission will shortly launch a public consultation on amendments to VAT legislation on travel and tourism. The European Commission's public consultation webpage sets out that *"Following the 'action plan for fair and simple taxation to support the recovery strategy', the purpose of this initiative is to assess and revise:*

- *the special VAT scheme for travel agents*
- *VAT rules on passenger transport*
- *the VAT exemption regime for non-EU travellers."*

Additional measures to support the travel and tourism sectors may be considered, given that they were hit hard by the COVID-19 restrictions."

The consultation (previously scheduled for Q4 2022) will now take place in Q1 of 2023 and will be open for input via the Have Your Say website.

CFE Opinion Statement on EU Corporate 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.

OECD Appoints New Deputy Secretary-General

The OECD has appointed Ms. Fabrizia Lapecorella as its new Deputy Secretary-General. Ms Lapecorella will commence in her new role on 3 April 2023.

Ms Lapecorella is an Italian national who presently serves as the Head of the Department for European Policies in the presidency of the Council of Ministers of Italy. Previously, Ms Lapecorella held the role of Director-General of Finance for the Ministry of Economy and Finance for Italy from 2008 to 2022. In that role, she led on matters related to tax policy, domestic European and international finance policy, governance of the Italian tax agencies, coordination of the information technology infrastructure serving the Italian Tax Administration and the administrative services for the Italian tax judicial system. Prior to this, she held various positions in the Italian Ministry of Economy and Finance.

In addition, Ms Lapecorella has held various leadership positions within the OECD, serving as Chair of the OECD's Committee on Fiscal Affairs in 2022, Deputy Chair of the Committee between 2017 and 2021, and as a member of the Committee Bureau since 2012. She was also a member of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) Steering Group from 2016 to 2022.

EU Consultation on Administrative Cooperation in VAT

The European Commission will shortly launch a public consultation on amendments to legislation on administrative cooperation in the area of VAT.

The European Commission's public consultation webpage sets out that *"According to the latest estimates, in 2020 the EU as a whole lost €93 billion in VAT revenue due to fraud and other economic contingencies. Administrative cooperation on VAT among EU countries is key to reducing this loss. The Commission therefore plans to amend existing EU rules on administrative cooperation and combating fraud in this field. The aim is to strengthen the tools tax administrations have at their disposal."*

The consultation will take place in Q1 of 2023 and will be open for input via the Have Your Say website.

OECD Publishes Revised Mutual Agreement Procedure

Last week, the OECD published an updated Assessment Methodology for peer review processes carried out under the BEPS Action 14 Mutual Agreement Procedure. Under the new Assessment Methodology, certain jurisdictions will be able to use a simplified peer process, with the aim of the jurisdiction moving to use a more robust programme in future MAP cases. Jurisdictions with significant experience with MAP procedures will go through a full peer review process, from January 2024. Jurisdictions using the full peer review process will be reviewed once every four years. A schedule for the simplified process is available here. One will be released by the end of 2023 for the full review jurisdictions.

Jurisdictions will also be required to provide data on the break down of the average time to close cases in the unilateral and bilateral stages of MAP and identification of the age of pending cases as part of their MAP Statistics Reporting Framework. The data collected will be included in the 2023 MAP Statistics onwards. Similarly, where jurisdictions have Advance Pricing Agreement programmes, annual statistics will be reported and published on the OECD website in a common format from 2024 onwards. More details are available here.

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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