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# CFE's Tax Top 5

Key tax news of the week

**Brussels, 22 May 2018**

## EU Commission and Council Work on Corporate Tax Scrutinised by Parliament

European Parliament's Committee on financial crimes, tax evasion and tax avoidance (TAX3) session of Tuesday 15 May 2018 discussed the transparency record of the Council of EU on matters of taxation and further steps to improve the EU 'blacklist' of non-cooperative jurisdictions for tax purposes.

The European Ombudsperson, Emily O'Reilly, listened to concerns of the Members of Parliament regarding the absence of transparency of the work of the Council, and in particular the Code of Conduct Group (Business Taxation). Ms O'Reilly highlighted the lack of cooperation with the Council on tax policy matters, which failed to respond to requests for documents, including those that had often been misclassified as confidential or for limited circulation. As a personal view, the Ombudsperson stated that politicians need to be vocal about the issues that are important regarding taxation, citing a figure of up to 1 trillion Euro as estimated size of the EU tax gap. In her capacity as European Ombudsperson, Ms O'Reilly will present a special report to Parliament looking for political support regarding malpractice in the Council of the European Union in the tax area, and in particular the non-transparency of Council in relation to the work of the Code of Conduct Group (Business Taxation).

A panel discussion followed on EU's list of non-cooperative jurisdictions, attended by Valère Moutarlier, EU Commission's Direct Tax Director. Parliament recognised the blacklisting process as a positive step to improve tax good governance among third-countries and by implication, among EU Member states, however Members of Parliament highlighted their concerns that the 'blacklisting' process is highly political rather than technical. In this regard, the delisting of initially blacklisted jurisdictions was cited as an example of political interference into what should have been a technical process aimed at improving tax good governance.

## Council Formally Adopts 5th Anti-Money Laundering Directive

The Council of the EU formally adopted the 5th EU Anti-Money Laundering Directive on Monday 14 May, following the political agreement between Council and Parliament of 15 December 2017. The 5th AML Directive seeks to prevent large scale concealment of funds and to introduce increased corporate transparency rules, whereby corporate and other legal entities will be required by law to publicly disclose information on the beneficial ownership.

- **Transparency requirements for corporate entities and trusts**

Under the new rules, member states shall be required to ensure compulsory public disclosure of certain information on beneficial owners in respect of companies and legal entities engaging in profit-making activities.

Conversely, public access requirements are not put in place in respect of trusts and other legal arrangements. The 5th AML Directive recognises that trusts may also be set up for non-commercial purposes, such as charitable aims, use of family assets, and other purposes beneficial to the community/ general public. Considering that such arrangements do not qualify as business benefits, the essential data on trusts' beneficial owners shall only be granted to persons holding a legitimate interest. Similarly, the 4th AML Directive already grants competent authorities access to beneficial ownership of trusts and other legal arrangements, albeit in limited circumstances.

- **Virtual currencies and verification**

The 5th AML Directive introduces a requirement for member states to verify beneficial ownership information submitted to their beneficial ownership registers as well as an extension of anti-money laundering legislation applicability to virtual currencies.

- **Third-countries**

With respect to transactions involving third countries, the obliged entities shall apply enhanced customer due diligence measures set out in the directive. Member States will introduce such rules as a requirement for all transactions with natural persons or legal entities established in third countries identified as high-risk countries pursuant to Article 9 (2) of the Directive.

- **Background**

The 5$^{th}$ AML Directive stems from Commission's Action Plan of July 2016 for strengthening the fight against money-laundering and terrorist financing, aiming to prevent illicit movement of funds or other assets and disrupting the sources of revenue. On 12 February 2016, the ECOFIN Council called on the Commission to initiate amendments to the 4th AMLD in the second quarter of 2016 the latest. The informal ECOFIN Council also called for action in April 2016 to enhance the transparency of beneficial ownership registers, to clarify the registration requirements for trusts, to speed up the interconnection of national beneficial ownership registers, to promote automatic exchange of information on beneficial ownership, and to strengthen customer due diligence rules. The EU's AML revised framework that is in force at present was adopted on 20 May 2015, consisting of the 4th AML Directive and Regulation (EU) 2015/847 on information accompanying transfers of funds. The transposition deadline for the 4$^{th}$ AML Directive and the entry into force of Regulation (EU) 2015/847 was set for 26 June 2017. The EU's supranational risk assessment was also published back in June 2017.

**OECD Preferential Tax Regime Compliance**

The OECD has released updates concerning reviews conducted by the Forum on Harmful Tax Practices (FHTP) in relation to compliance of preferential tax regimes of inclusive framework countries with OECD/G20 BEPS standards to improve the international tax framework, in accordance with BEPS Action 5.

Regimes from Lithuania, Luxembourg, Singapore and the Slovak Republic designed to comply with the standards were determined not to be harmful and met the transparency and exchange of information criteria. A further four regimes from Chile, Malaysia, Turkey and Uruguay were either abolished or require amendment to remove harmful features. 3 additional regimes, 1 from Kenya and 2 from Vietnam, were found not to pose a BEPS Action 5 risk and were accordingly held to be out of scope.

The FHTP have considered 175 regimes from over 50 jurisdictions since the Inclusive Framework was formed. From these regimes reviewed, 4 were found to have harmful features, 31 have been changed, 81 require legislative changes that are currently in progress, 47 were found not to pose any BEPS risk, and 12 are presently under review.

Full details of the regime reviews can be found on the OECD website at this link.

**Finland to Introduce Digital Tax**

Finland has introduced a bill in its Federal Parliament which, if passed, will implement aspects of the European Commission proposals concerning the concept of a digital permanent establishment. The bill adopts the criteria established in the European Commission proposals, i.e  that if a digital business meets the following criteria it will be deemed as having a permanent establishment and taxable presence in Finland:

- Exceeds a threshold of 7 million Euro in annual revenue in Finland;
- Has more than 100,000 users in Finland in a taxable year; or
- Over 3000 business contracts for digital services are concluded within a taxable year.

**OECD Inclusive Framework**

Bahrain and The United Arab Emirates have now become the 115th and 116th jurisdictions respectively to join the OECD's Inclusive Framework of minimum standards devised by the OECD and G20 countries as part of the 2015 Base Erosion Profit Shifting Plan (BEPS). Both countries have thereby committed to implementing anti-BEPS minimum standards and peer review processes, as part of the OECD efforts to address tax avoidance.

Joining the OECD Inclusive Framework also indicates compliance with conditions set by the European Commission in order for Bahrain to be delisted from the EU's list of non-cooperative jurisdictions in taxation matters aimed at promoting tax good governance and minimising tax avoidance. Following an assessment of commitments made to remedy the EU concerns, the

ECOFIN Council at the March meeting removed Bahrain, the Marshall Islands and Saint Lucia from the “blacklist”.

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