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Agreement on Digital Tax Within Reach After US Policy "U-Turn"

The new US Secretary of Treasury Dr Janet Yellen confirmed that President Biden's administration is ready to drop the 'safe harbour' requirement, a key obstacle to an international agreement on Pillar One concerning taxation of the digital economy. At the G20 meeting on Friday 26 February, Secretary Yellen said the US was no longer advocating for safe harbour implementation, and will engage robustly to address both pillars of the OECD project, the tax challenges of digitisation and a robust global minimum tax, a US official was quoted for the Financial Times. Secretary Yellen's letter to G20 ministers also focused on urging countries to continue to take significant fiscal and financial policy actions: *"If there was ever a time to go big, this is the moment. We must make*

sure that the benefits of international trade and investment are realised by our workers and consumers. Together, our efforts will be greater than the sum of our individual responses. Together, we can build a better, stronger, more even global recovery.", Secretary Yellen said.

The OECD Secretary-General Angel Gurría presented a report to G20 Finance Ministers and Central Bank Governors, providing an overview of the activities and achievements in the OECD's international tax agenda as mandated by the G20. In an upbeat message to the G20 officials, the Secretary-General said: "*Today, all the conditions to find a consensus-based solution by the July meeting of G20 Finance ministers are met. First, we have a solid technical basis with the Blueprints of Pillar One and Pillar Two, which you welcomed in October. Public comments have since called for simplifications which can be advanced by July to make both Pillars fully implementable. Second, the political conditions for a deal in July are present with very strong and positive messages from the new US Administration. This constructive attitude to "re-energise the negotiation" echoes the strong signals from the Ministerial roundtable at the first public meeting of the G20/OECD Inclusive Framework in January- "let's get it done!" Reaching a solution between now and your July meeting will only be achieved with your strong leadership and unequivocal political support and involvement."*

These developments were welcomed by the EU and the G20 finance ministers, who expressed their unequivocal support for the reform, in particular for agreement on the two-pillar reform of the international tax rules by July 2021. To that end, a High Level Tax Symposium and a Conference on Climate will be held in Venice in July to tackle these and other issues, such as equitable access to vaccines for all countries, and a transition towards more sustainable and equitable post-Covid world.

EU Council Updates Tax Blacklist

The EU's list of non-cooperative jurisdictions for taxation purposes was updated by the Council of the EU on 22 February 2021.

Dominica was added to the Blacklist following on from its OECD Global Forum peer review report on transparency and exchange of information, in which its compliance rating remained partially compliant. Barbados was removed to Annex II of the EU Blacklist pending the outcome of a supplementary review by the Global Forum.

Following commitments made to reform tax policies, the following 9 jurisdictions are now listed in the Annex II "grey-list" of non-compliant countries who have undertaken to reform their tax policy: Australia, Barbados, Botswana, Eswatini, Jamaica, Jordan, Maldives, Thailand and Turkey. Turkey has been asked to resolve exchange of information issues with Member States in order to avoid being moved to the blacklist.

Twelve jurisdictions remain on the EU blacklist: American Samoa, Anguilla, Dominica, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands and Vanuatu. Morocco, Namibia and Saint Lucia have now been removed completely from the list after fulfilling all commitments.

OECD Publish Report on Taxing Energy Use for Sustainable Development

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The OECD has published a report entitled Taxing Energy Use for Sustainable Development, examining the opportunities for energy tax and subsidy reform in selected developing and emerging economies through the analysis of energy taxation in 15 countries, namely: Côte d'Ivoire, Egypt, Ghana, Kenya, Morocco, Nigeria and Uganda in Africa; the Philippines and Sri Lanka in Asia; and Costa Rica, Dominican Republic, Ecuador, Guatemala, Jamaica and Uruguay in Latin America and the Caribbean.

The report finds that although 83% of the countries do not tax carbon emissions, that the equivalent of 1% in GDP could be raised if the countries set carbon rates on emissions equivalent to 30 Euro per tonne of CO_2 and that given 13 of the 15 countries have fuel excise tax experience, the implementation of such a tax would be administratively achievable.

A report on effective carbon rates will be published in the coming months analysing the price of carbon emission as compared with climate costs.

EU Ministers Endorse Public Country-by-Country Reporting

The latest Competitiveness Council meeting of EU's Industry and Internal Market ministers saw a clear majority of EU countries endorse the latest proposal for a directive on public country-by-country reporting (CbCR), which seeks to add further transparency to the taxation affairs of multinational companies doing business in the Single Market. The Council invited the Council Presidency to start negotiations with the European Parliament on enacting this directive. On behalf of the EU Presidency, a Portuguese Minister stated: "*Tax transparency is a fundamental principle in any democratic society. It enables policy makers to take informed decisions and to ensure that all economic actors contribute in a fair and equitable manner to the economy of the various countries where they conduct their business. Today's debate has opened the way for the proposed directive to move forward as a matter of priority.",* Mr Pedro Siza Vieira, Portuguese Minister of State for the Economy and Digital Transition said.

These developments at EU level coincide with UN International Financial Accountability, Transparency and Integrity Recommendations on how to strengthen the global fight against illicit financial flows and tax avoidance, with a key recommendation for governments to introduce public CbCR.

Commenting, the EU Parliament negotiator on public CbCR, Evelyn Regner MEP said: *"We are ready to start negotiations with EU ministers to deliver on this crucial tool in the fight against tax evasion and tax avoidance. Our goal is a public country-by-country reporting that ensures meaningful financial transparency. Therefore, we want companies to disclose information in all countries they operate in, both in the EU and in third countries. To turn public country-by-country reporting into a sharp weapon against tax crimes, we want to oblige multinationals to reveal the number of all full-time employees, fixed assets and capital, net turnover, all profits and losses, as well as subsidies received by governments. As governments are helping companies out with public money to cope with the impact of the Covid-19 pandemic, tax payers have more than ever the right to know which big multinationals are playing fair and which are free-riding."*

The so-called 'trialogue' negotiations, which began in July 2017, were blocked in Council by member states opposing public CbCR. In October 2019, the Parliament passed a resolution calling on member states to conclude the first reading on public CbCR and enter inter-institutional negotiations with the Parliament. With the progress secured by the Portuguese presidency, the Council will now enter negotiations with the EU Parliament.

OpenLux: Tax Investigation into Luxembourg by Le Monde

In February, the French news publication Le Monde revealed it had completed an extensive investigation into tax affairs in Luxembourg, published in 5 chapters, concerning: transparency and beneficial ownership, French individuals, French families of great wealth, multinationals; and money laundering.

Le Monde reportedly compiled information from beneficial owner databases for the 124,000 companies registered in Luxembourg, revealing that their analysis

shows *"55,000 offshore companies managing assets worth at least 6 trillion euros",* with 90% of the beneficial owners of the companies reportedly controlled by non-Luxembourgish entities, from over 157 jurisdictions, with over 10,000 of these controlled by French entities. The report details that Luxembourg is home to over *"279 of the more than 2,000 billionaires listed by Forbes magazine and 37 of the 50 wealthiest French families".* The investigation was carried out jointly by S*uddeutsche Zeitung* in Germany, *Le Soir* in Belgium, McClatchy in the United States, Woxx in Luxembourg, *IrpiMedia* in Italy, and the OCCRP Consortium of investigative journalists.

The Luxembourg Government has published a pre-emptive statement concerning the OpenLux investigation, stating that *"Luxembourg is fully in line and compliant with all EU and international regulations and transparency standards, and applies, without exception, the full arsenal of EU and international measures to exchange information in tax matters and combat tax abuse and tax avoidance. Neither the EU nor the OECD have identified any harmful tax regime or practices in Luxembourg. Luxembourg provides no favourable tax regime for multinational firms, nor digital companies, which have to abide by the same rules and legislation as any other company in Luxembourg."*

Those in favour of corporate tax reform for the EU are now calling for the Commission to urgently impose a minimum taxation on corporate profits, public country-by-country reporting, and increase transparency that would bring an end to tax competition.

EU Commission Publishes Digital Targets Roadmap

The EU Commission has published a Roadmap concerning a planned Communication on Europe's digital decade: 2030 digital targets. The

Communication will identify the coherence of the EU's digital goals, aiming to foster digital leadership by stepping up work on improving digital skills and competences of citizens, digitalisation of all businesses and digital transformation of public administrations and public institutions.

The Roadmap sets out that digital technologies are critical to recover from the COVID-19 crisis, to ensure that everybody can benefit from digital opportunities, to foster EU's resilience and address the risks and dependencies on third countries, as well as to influence EU's positioning on the global stage. Input can be submitted on the Roadmap document until 9 March 2021 via the Have Your Say portal.

OECD Calls on Countries to Target Professional Enablers of Tax Crimes

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The latest OECD Report entitled "*Ending* the *Shell Game*: *Cracking down* on the *Professionals* who *enable Tax* and *White Collar Crimes*" calls on governments to target professional enablers of tax crimes and other white collar crime, facilitated through complex legal and tax structures. The report notes that whilst the vast majority of intermediaries such as tax advisers, lawyers, notaries and financial institutions contribute to making complex tax and legal systems work, the small minority of professional enablers continue to play key role in defrauding governments and help clients evade their tax obligations. The means of doing so continue to be focused on non-transparent structures and schemes seeking to conceal the identity of individuals behind the activities.

Key elements of the report call on countries to develop strategies that would:

- ensure that tax crime investigators are equipped to identify the types of professional enablers operating in their jurisdiction, and to understand the

risks posed by how they devise, market, implement and conceal tax crime and financial crimes;

- ensure the law provides investigators and prosecutors with sufficient authority to identify, prosecute and sanction professional enablers, both to deter and penalise;
- implement multi-disciplinary prevention and disruption strategies, notably through engagement with supervisory, industry and professional bodies, to prevent abusive behaviour, incentivise early disclosure and whistle-blowing and take a strong approach to enforcement;
- ensure relevant authorities proactively maximise the availability of information, intelligence and investigatory powers held by other domestic and international agencies to tackle sophisticated professional enablers operating across borders;
- appoint a lead person and agency in the jurisdiction with responsibility for overseeing the implementation of the professional enablers strategy, undertake a review of its effectiveness over time and devise further changes as necessary.

The OECD report will be discussed at the OECD Global Anti-Corruption and Integrity Forum on 24 March at 16:45, open for stakeholders and the general public to register to attend.

EU TAXUD Publishes Brexit Rules of Origin Guide

The EU Commission's TAXUD has published a guide for traders concerning the rules of origins provisions of the EU-UK Trade & Cooperation Agreement, under which preferential rules of origin apply. The guide covers determining the origin of goods, how to ensure a trader can benefit from the rules, the claim process, verification and record keeping.

OECD BEPS Action 14 Public Consultation

The OECD held an online public consultation on 1 February on the 2020 review of BEPS Action 14 on dispute resolution minimum standards and improving the mutual agreement procedure (MAP). Public comments received concerning the consultation were addressed by way of panel discussions covering input topics.

Speakers discussed issues surrounding preventing disputes, access to MAP, resolution of MAP cases, implementation of MAP agreements, statistics concerning the use of MAP and suggestions for its improvement.

The consultation is available to replay via the OECD website.

EU Court of Auditors Assesses 70 Billion Lost Annually Through Corporate Tax Avoidance

The European Court of Auditors have released a report on the exchange of tax information in the EU, assessing the effectiveness of the system for the period 2014 to 2019, examining the framework proposed and put in place, the monitoring of implementation and the performance of the system of exchange.

The Court of Auditors estimates in its report that due to issues with the system of exchange and incomplete/inefficiencies in reporting that between €50 to 70 billion Euros tax revenue is lost per year.

The report highlights issues with lack of guidance and insufficient measurement of outcomes of the system, and the Court of Auditors recommends in its report that the EU Commission should expand monitoring activities and introduce legislative proposals that all relevant income information is exchanged.

The selection of the remitted material has been prepared by:

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