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EU List of Non-Cooperative Jurisdictions for Tax Purposes Updated

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The Council of the EU has added the jurisdictions of the British Virgin Islands, Costa Rica, Marshall Islands and Russia to the so-called "Blacklist", the List of Non-Cooperative Jurisdictions for Taxation Purposes.

The British Virgin Islands were added to the list for not sufficiently complying with the OECD standard on exchange of information on request. Costa Rica was added for failing to fulfil its commitment to abolish or amend the harmful aspects of its foreign source income exemption regime. The Marshall Islands were added due to concerns over the jurisdiction having a zero or only nominal rate of corporate income tax and lacking in the enforcement of economic substance requirements.

Russia was added for failing to address the harmful aspects of a special regime for international holding companies and following the Russian aggressive against Ukraine.

The following jurisdictions were recognised for fulfilling their commitments and were removed from Annex II: Barbados, Jamaica, North Macedonia and Uruguay. Hong Kong and Malaysia were given an extension to complete reforms concerning foreign source income exemption regimes for capital gains. Qatar was granted an extension due to constitutional reform constraints.

Aruba and Curaçao were featured in Annex II for undertaking to improve their Global Forum determinations as regards the automatic exchange of information on financial accounts. Belize and Israel also made this commitment criteria and Albania committed to amend or abolish its potentially harmful regime.

The following countries are on the revised Blacklist:

- American Samoa
- Anguilla
- Bahamas
- British Virgin Islands
- Costa Rica
- Fiji
- Guam
- Marshall Islands
- Palau
- Panama
- Russia
- Samoa
- Trinidad and Tobago
- Turks and Caicos Islands

- US Virgin Islands
- Vanuatu

The Blacklist is reviewed twice per year, and will next be reviewed in October 2023.

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.

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.

EU Parliament Subcommittee on Tax Matters Publishes 2023 Schedule of Work

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The European Parliament's Permanent Subcommittee on Tax Matters ("FISC") has now published a 2023 Workload and Meetings schedule.

On 28 March, FISC will hold an exchange of views with the OECD on Pillar 1 and 2 of the OECD/G20 Inclusive Framework's Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. The FISC will also hold a case study at the March meeting concerning Germany and implemented national tax reforms and the combat against aggressive tax schemes.

In April, FISC will hold an exchange of views with the Chair of Code of Conduct Group on Business Taxation. The FISC will also organise Missions to Croatia, the United Kingdom, Singapore, Washington D.C. and Sweden as part of its work programme in 2023.

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

Registration is open 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"*. These two key European Commission projects mark another milestone in the deepening of EU fiscal integration. The Directive on Minimum Tax which implements Pillar 2 has been adopted and is now EU law. The directive relies on a degree of inter-nation fiscal equity, with minimum common standards for paying a 'fair share' of tax. Member states, tax administrations, companies and advisers all have questions about the implementation and the mechanism of operation. CFE will seek to clarify the main issues surrounding the practical application of the new directive as well as the issues posed by the lack of US implementation for taxpayers and wider.

On the other hand, similar developments have already been occurring in the indirect tax area. VAT, which as an area of competence for the EU, has evolved alongside the European project and is now entering the digital age. To discuss the VAT in the Digital Age EU package, CFE has invited a number of speakers to consider the policy side as well as the technical implications.

More details about the programme and line-up of speakers will be made available in due course. Register now here.

OECD Public Consultation on Compliance & Tax Certainty of Global Minimum Tax - 16 March 2023

The OECD has published comments received on the compliance and co-ordination aspects of the Pillar Two global minimum tax from the agreement of the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework) to implement the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy.

On 16 March 2023 at 12:30-15:30 CET, a public consultation meeting will now be held to discuss the published comments. Input received relating to the *GloBE Information Return* consultation and to the *Tax Certainty for the GloBE Rules* will be discussed during the public consultation meeting. Discussions will also cover how to preserve consistent and co-ordinated outcomes for MNEs while minimising compliance burdens and avoiding the risk of double taxation.

The meeting will take place online via Zoom/OECD TV and will be open to the public. Live interpretation will be available in English and French. Interested parties can register here.

FATF Updates List of Jurisdictions Under Increased AML Monitoring

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Global money laundering and terrorist financing watchdog, FATF, the Financial Action Task Force, provided updates on its List of High-Risk Jurisdictions & List of Jurisdictions Under Increased Monitoring at its Plenary meeting held from 22 - 24 February 2023.

South Africa and Nigeria were added to the List of the Jurisdictions Under Increased Monitoring at the Plenary meeting, and have made commitments to work with FATF to strengthen their AML/CFT regimes, with further details of steps to be taken set out in the List. Cambodia and Morocco were removed from the List based on their *"progress in improving their respective AML/CFT regimes covered by their individual action plans. Each country has addressed its technical deficiencies to meet the commitments of its action plan on strategic deficiencies that the FATF identified in February 2019 and 2021 respectively."* The jurisdictions will continue to further strengthen their AML/CFT regimes through cooperation with regional watchdog bodies.

Also at the Plenary, FATF voted to suspend the membership of the Russian Federation, stating that the *"Russian Federations continuing and intensifying war of aggression against Ukraine runs counter to FATF's principles of promoting security, safety and the integrity of the global financial system and the commitment to international cooperation and mutual respect upon which FATF Members have agreed to implement and support the FATF Standards."*

Information on the key outcomes from the Plenary can be found here.

ECHR Publishes Judgment in LuxLeaks Whistleblower Case

The European Court of Human Rights has published its judgment in the LuxLeaks Whistleblower Case. The Grand Chamber in the case of Halet v. Luxembourg (application no. 21884/18) held that there had been a violation by Luxembourg of Article 10 (freedom of expression) of the European Convention on Human Rights.

As set out in the Press Release of the Court:

The case concerned the disclosure by Mr Halet, while he was employed by PwC, of confidential documents protected by professional secrecy, comprising 14 tax returns of multinational companies and two covering letters, obtained from his workplace. Following a dismissal by his employer, and at the close of criminal proceedings against him, Mr Halet was ordered by the Court of Appeal on appeal to pay a criminal fine of 1,000 euros, and to pay a symbolic sum of 1 euro in compensation for the non-pecuniary damage sustained by his employer.

In view of its findings as to the importance, at both national and European level, of the public debate on the tax practices of multinational companies, to which the information disclosed by the applicant had made an essential contribution, the Court considered that the public interest in the disclosure of that information outweighed all of the detrimental effects arising from it.

The Court held that Luxembourg was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 40,000 in respect of costs and expenses.

UN Invites Public Input on International Tax Plan

The United Nations has invited public input concerning a Resolution adopted by the General Assembly on 30 December 2022 calling for *"intergovernmental discussions in New York at United Nations Headquarters on ways to strengthen the inclusiveness and effectiveness of international tax cooperation through the evaluation of additional options, including the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process."*

The Resolution requests the Secretary-General to prepare a report on all relevant international legal instruments, other documents and recommendations that address international tax cooperation and outline potential next steps, such as the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation.

Input should be submitted to the Secretariat by 10 March 2023, via e-mail, at: taxreport2023@un.org. There is no set template for input, and input is welcome on any of the the range of issues addressed in the Resolution. The submissions will subsequently be published on the UN's Inputs webpage.

EU Parliament Publishes Study on Tax Compliance Costs

The EU Parliament has published a Study which presents an overview of the tax compliance costs faced by European enterprises, with a focus on SMEs.
The study was prepared at the request of the Parliaments Permanent Subcommittee on Tax Matters (FISC).

The report concludes that costs of compliance are larger for smaller enterprises, with costs averaging somewhere between 1 to 2% of turnover, and around an amount of 15,000 EUR for an entity in the EU on average. The authors found that cross-border activities did not significantly increase compliance costs, as this provided opportunities in the form of transfer pricing etc.

The authors of the study were supportive of the Commission's BEFIT proposals in their conclusions, stating that "*the harmonisation of tax bases would in* *principle imply a reduction in complexity and, consequently, in compliance costs associated with the different activities and the expertise required to properly fulfil compliance obligations. Thus, for instance, the introduction of a harmonised corporate tax base as defined in the CCCTB proposals, and now discussed with regard to the BEFIT proposal, could generate a positive dividend in that it would reduce compliance costs".*

Further, the authors are of the view that "*EU-wide reforms that still permit national governments to keep (or to introduce new) tax exemptions or those that only impose minimum regimes (such as the ATAD rules) or those that apply to a very limited set of enterprises (like reform proposals, such as the 2016 CCCTB, which apply exclusively to very large company groups) are likely less effective in curbing tax compliance costs."*

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