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BRUSSELS | JULY 2022

EU Commission Launches Consultation on Improving Tax Intermediaries Regulatory Framework

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The EU Commission has now launched its highly anticipated public consultation on the policy options being considered to improve tax intermediaries' regulatory framework, for a legislative proposal referred to in the consultation document as “SAFE”, a proposal to tackle the role of enablers that facilitate tax evasion and aggressive tax planning in the European Union (Securing the Activity Framework of Enablers – SAFE). According to the Call for Evidence accompanying the consultation, a legislative proposal is planned to be published in Q1 2023. The consultation will run until 12 October, and interested parties can submit feedback on the questionnaire via the Have Your Say portal.

The consultation documents sets out that the options currently being considered by the Commission for the proposed directive include:

- **Option 1: Requirement for all enablers to carry out dedicated due diligence procedures** - to perform a self-assessment test to demonstrate that the tax schemes do not lead to tax evasion or aggressive tax planning.
- **Option 2: Prohibition to facilitate tax evasion and aggressive tax planning combined with due diligence procedures and a requirement for enablers to register in the EU** - this would combine the above due diligence procedure requirements with either mandatory registration for enablers in order to be able to provide tax advice or optional registration that gives access to certain benefits (e.g. submitting tax return on behalf of their clients).
- **Option 3: Code of conduct for all enablers** - that would prohibit the enablers who design, market, organise or assists in the creation of tax evasion and aggressive tax planning schemes without any complementary mandatory measures.
- **New reporting requirements:** In addition to the above options, the Commission is also considering the introduction of new reporting requirements as part of the proposal, introducing mandatory reporting for EU taxpayers of participation above 25% of shares, voting rights, ownership interest, bearer shareholdings or control via other means in a non-listed company outside the EU.

The Call for Evidence details that the legislative basis being considered for the planned proposal are Article 115 and Article 50(2)(g) of the Treaty on the Functioning of the European Union (TFEU). It is likely Article 115 is being considered as the legal basis for the Code of Conduct, Due Diligence and Register aspects of the proposal, which would require unanimous approval at

Council level from the Member States, and Article 50 would likely apply to the reporting requirements, which would follow the ordinary legislative procedure.

The consultation also contains questions on the issue of the measures being enforced via monetary penalties as a means of deterring facilitating evasion and sanction enablers, either as a proportion of their fees, a proportion of the amount of tax evaded or absolute fixed amounts. Additionally, the consultation includes questions on the possibility of preventing enablers who would fit the criteria from providing further services as a means of a deterrent.

Czech EU Presidency Aims for October Adoption of Pillar 2 Directive

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Speaking in the European Parliament, Zbyněk Stanjura, the Czech Finance Minister confirmed work on ironing out any remaining differences among member states will be intensified come autumn, with a view of reaching a uninamous EU deal by the 4 October ECOFIN summit in Luxembourg. The Czech Presidency of the Council of the EU held its first ECOFIN meeting on 12 July, at which it presented its Presidency Agenda for the second half of 2022.

The ECOFIN Council meeting of 12 July also saw the adoption of the legal framework to include Croatia in the Single European Currency. As of 1 January 2023, Croatia will adopt the Euro, becoming the 20th EU member state to join the Eurozone. The Council adopted the final three legal acts which will enable Croatia to formally introduce the Euro, setting the conversion rate between the Euro and the Croatian Kuna at 7.53450 Kuna per 1 Euro.

The Czech Finance minister presented the Presidency Work Programme, where the implementation of the OECD Global Tax Agreement is listed as a very high priority for the Presidency. Additionally, the Czech Presidency will aim to focus on unjustified tax exemptions, strengthening tax transparency and updating the EU list of noncooperative jurisdictions. It will focus on negotiations on the Carbon Border Adjustment Mechanism at Council and, thereafter, trilogue level with the aim to reach political agreement on this file under its Presidency. The current AML package is also detailed as a specific priority, as is the legislative package for reform of the Customs Union which will be presented during its Presidency.

OECD Releases Progress Report on Pillar 1

The OECD has now released a Secretariat - prepared progress report concerning Pillar 1 and the implementing multilateral convention, at the same time, seeking input by 19 August on the Progress Report on Amount A of Pillar One.

The revised timeframe now sets out the detail on finalising the new Multilateral Convention, which the the Inclusive Framework should agree by mid-2023, for entry into force in 2024. This revised timeline, according to OECD Secretary-General Mathias Corman, will allow for better stakeholder participation. Further technical detail is set out in the OECD draft document.

“We have made good progress towards implementation of a new taxing right under Pillar One of our international tax agreement. These are complex and very technical negotiations in relation to some new concepts that fundamentally reform international tax arrangements, to make them fairer and work better in an increasingly digitalised, globalised world economy,” OECD Secretary-General Mathias Cormann said. “We will keep working as quickly as possible to get this work finalised, but we will also take as much time as necessary to get the rules right. These rules will shape our international tax arrangements for decades to come. It is important to get them right," Corman said.

The documents are not agreed by the members of the Inclusive Framework and seek to gather stakeholder input on the matter. OECD notes that whilst comments are invited on any aspect of the rules, input will be most helpful where it explains the additional guidance that would be needed to apply the rules to the circumstances of a particular type of business, as well as input on whether anything is missing or incomplete in the rules. Comments on the Secretariat draft are welcome until 19 August 2022 at tfde@oecd.org.

EU Tax Policy Report: Semester I - January to June 2022

CFE Tax Advisers Europe has now published its EU Tax Policy Report covering the first semester of 2022. The EU Tax Policy Report is a bi-annual publication which provides a detailed analysis of significant primary law and tax policy developments at both EU and international level that have occurred in the previous six months which would be of interest to European tax advisers. It also includes an overview of selected CJEU case-law and relevant European Commission decisions.

We invite you to read the EU Tax Policy Report, and remain available for any questions or comments that you may have.

EESC Calls for Simplified Tax Rules on Cross-Border Teleworking

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The European Economic and Social Committee have recently adopted an opinion on the taxation of cross-border teleworkers and their employers. The EESC calls on the European Commission to develop a set of rules that ensures that employees and employers in Europe do not suffer double or multiple taxation, or unintended non-taxation, due to working from abroad.

The EESC in the opinion sets out the following:

- stresses that the rules should be easy for both employees and employers. One possibility would be for Member States to agree to only tax the employee if the number of working days in the country exceeds 96 days per calendar year. The EESC notes that in the OECD/IF tax work, a Multi Lateral Instrument (MLI) has been used as a tool to facilitate a timely implementation of new tax rules;
- encourages the EC to consider whether a one-stop shop, like we have in the VAT area, could be a possibility. It would require the employer to report for cross-border teleworkers the number of days teleworkers worked in their country of residence and in the country where the employer is located.

Rapporteur on the file, Krister Andersson, said of the opinion: *"We are in a new world, where people want to work differently. The EESC fully supports more flexible work and cross-border teleworking situations. But this new paradigm also poses serious challenges for international taxation systems and an efficient European single market. We ask the Member States and the European Commission to keep working together to find solutions."*

UK Publishes Draft Legislation on Multinational Top Up Tax

The UK's revenue authority, HM Revenue and Customs, has published a policy paper on draft legislation which seeks to impose a top-up tax on UK parent members when a subsidiary is located in a non-UK jurisdiction, and the group's profits arising in that jurisdiction are taxed at below the minimum rate of 15%.

The legislation will come into effect for fiscal years on or after 31 December 2023.

This draft legislation seeks to implement the OECD Pillar 2 agreement into UK law, and follows on from the publication of the OECD Pillar 2 Model, which contains detailed rules to assist governments in the implementation of the minimum 15% tax rate. The multinational top-up tax is the UK's adoption of the Income Inclusion Rule (IIR), one of the two charging mechanisms in the Global Base Erosion Rules (GloBE rules). The GloBE rules have been developed by the OECD's Inclusive Framework, as part of the solution to address the tax challenges of the digital economy.

The draft legislation is available here.

EU Commission Launches Public Consultation on Revision of the EU Customs Code

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The European Commission has launched a consultation which will feed into a planned legislative proposal, anticipated to be published in Q4 of 2022, to revise the EU Customs Code. The legislation will aim to address challenges posed by the rise of e-commerce, uneven facilitation and simplifications for legitimate trade, enforcing prohibitions and restrictions, management of information, data fragmentation, analytical capacity, co-operation between customs authorities and governance of the Customs Union by Member States.

In the Call for Evidence on the consultation webpage, the following are listed as measures being considered for the legislation by the Commission:

- *Strengthening common risk management, for example by, leveraging partnerships with trusted traders and other competent authorities and reinforcing the advance cargo information.*
- *Simplifying customs formalities for reliable and trusted traders established in the EU, for example by making more use of commercial information rather than of burdensome administrative requirements.*
- *Enhancing the co-operation between customs and non-customs authorities (such as market surveillance authorities, law enforcement authorities, tax agencies). This could cover, for example, joint policy elaboration, operational coordination, enforcement and information exchange.*
- *Reforming the EU customs governance to provide for an EU layer which could, for example:*
    - *Better implement the "risk appetite" or risk priorities identified at policy and political level.*
    - *Better deliver on activities where "acting as one" would add value (e.g. EU-wide risk management, information technology management, training of customs officers, financing of customs equipment, supporting simplifications and services for trade, handling EU crisis response, as well as "protecting as one" by driving joined-up co-operation between the customs and other authorities).*
- *Providing for a fully-fledged EU customs information environment, putting emphasis on data management capabilities for better risk management, and including simplified provision of data (e.g. enabling re-use of data, avoiding duplications, etc.) in reduced customs processes, streamlined handling of non-customs formalities (building on the concept of "single window"), more tailored services for trade, other public authorities and consumers.*

- *Adapting customs legislation to e-commerce transactions, for example by strengthening supervision of business-to-consumer flows and liability of involved actors for all fiscal and non-fiscal rules.*
- *Integrating the green agenda in the customs agenda and traders behaviours.*

Input can be provided on the consultation questionnaire until 14 September via the Have Your Say website.

Global Forum Holds 9th Competent Authorities Meeting

The Global Forum's Competent Authorities held their 9th annual meeting at the beginning of this month, with over 355 participants from 106 jurisdictions. Attendees discussed the implementation of both the exchange of information on request (EOIR) and the automatic exchange of financial account information (AEOI) standards and communication between competent authorities, including expected improvements to exchange channels.

The Global Forum Secretariat also updated participants on the tools developed for capacity-building purposes and available to Competent Authorities, with a specific focus on the Model Manual on Exchange of Information for Tax Purposes.

EU Commission Publishes Annual Report on Taxation 2022

The EU Commission has published its Annual Report on Taxation 2022, which assesses the performance of the tax systems and tax policies of the individual Member States and across the EU as a whole.

The report sets out that the coronavirus crisis led to the first decline in tax revenues within the Member States since the 2009 recession. It is noted that various measures aimed at supporting businesses and households to relieve economic contraction caused by COVID-19 contributed to the decline in tax revenues, such as *"corporate and personal income tax cuts, deferrals and waivers on corporate and personal income tax and social security contributions, PIT tax brackets adjustments to make systems more progressive, discounts on early payments and reduced penalties on late payments, various tax incentives to investment and temporary VAT reductions".*

The report also highlights that the vast majority of tax revenue comes from labour taxes, and that in order to future proof tax systems, "*substantial structural changes across global economies in the areas of (i) ageing societies and the implied labour market shifts, (ii) digitalisation, (iii) globalisation, and (iv) climate change"* need to be addressed.

'Living CFE': CFE's Publishes & Forthcoming Publications, Events & Statements

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CFE Tax Advisers Europe is pleased to share the latest edition of 'Living CFE'. The publication includes key events and meetings attended or organised by CFE Tax Advisers Europe, technical work submitted to international organisations or publicly released, and forthcoming events.

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

The selection of the remitted material has been prepared by:
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