BRUSSELS I **JANUARY 2019**

1. International community makes important progress on the tax challenges of digitalisation

On 23-24 January, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) met, bringing together 264 delegates from 95 member jurisdictions and 12 observer organisations. The Countries and jurisdictions will step up efforts toward reaching a global solution on how to best tax multinational enterprises in a rapidly digitalising economy.

Future discussions to reach a solution will be based around two pillars, identified in a new Policy Note released after the Inclusive Framework's meeting. The first pillar will focus on how the existing rules that divide the right to tax the income of multinational enterprises among jurisdictions could be modified to take into account the changes that digitalisation has brought to the world economy. The second pillar aims to resolve remaining BEPS issues and will explore two sets of interlocking rules designed to give jurisdictions a remedy in cases where income is subject to no or only very low taxation.

Given the significance of the new proposals for the international tax system, the Inclusive Framework will issue a consultation document that describes the two pillars in more detail, and a public consultation will be held on 13 and 14 March 2019 in Paris as part of the meeting of the Task Force on the Digital Economy.

2. US proposed tax plan viewed with caution at the World Economic Forum in Davos

The World Economic Forum, held in Davos, Switzerland, from 22 – 25 January 2019, gathered businesses, politicians and academics with the aim of demonstrating entrepreneurship in the global public interest while upholding the highest standards of governance.

At the Forum, the newly elected US Congresswoman Alexandria Ocasio-Cortez suggested a tax plan of 70% tax on income over $10 million revenue. According to the New York Democrat, that could fund a climate change plan she is pushing called the "Green New Deal."

Many at the World Economic Forum viewed the proposal with caution. At the moment, the current highest US personal income tax rate is 37%, and such an increase could possibly lead to sheltering of income, which could cause a drag on productivity. The plan still has a long way to go; it must pass through the House, Senate, and finally the US president.

3. Papua New Guinea signs the multilateral BEPS convention

On 1 December, Papua New Guinea has joined the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The BEPS convention aims to combat tax avoidance by multinational enterprises (MNEs) through prevention of Base Erosion and Profit Shifting (BEPS).

The BEPS multilateral instrument was negotiated within the framework of the OECD G20 BEPS project and enables countries and jurisdictions to swiftly modify their bilateral tax treaties to implement some of the measures agreed. The MLI entered into force on 1st July 2018 and already covers 87 jurisdictions.

4. China's revised Individual Income Tax Law comes into full effect

Since 1 January 2019, China's new individual income tax law (IIT law) has come into full effect. The IIT law aims to mitigate the burden for low to mid-income earners while taking a tougher posture on foreign workers and high-income groups.

Among the changes, special attention should be given to further clarifications on the details of the new IIT general anti-avoidance rule (GAAR), and the specific provisions addressing related party transactions and controlled foreign companies. These provisions are based on the equivalent corporate income tax (CIT) rule guidance, though with important differences.

It should be stressed that, following the merger of the state and local tax bureaus in 2018, enforced cross-border IIT and CIT matters will be overseen by unified international tax department at provincial level, meaning a step-change in enforcement effectiveness.

5. Georgia's new customs code comes into force

The Prime Minister of Georgia, Mamuka Bakhtadze, announced that a new, European style, customs code will come into force in Georgia in 2019. The Prime Minister stated that the existing customs code failed to respond to current challenges, and that with the new code will enable a more effective integration of Georgia into the global economy.

Georgia's customs policy is now based on modern customs infrastructure, simple and fair procedures, and the conception of digital customs, which means electronic provision of all customs services to businesses.

Ivane Machavariani, Georgia's Finance Minister, said that "The new code is in full compliance with high, European standards. It has been drafted by Georgian and EU experts. The new code will provide stimulus for new investments from Europe in Georgia and help the integration of Georgian businesses on the European market."

6. OECD updates on harmful tax practices

The OECD has released a new publication, called Harmful Tax Practices - 2018 Progress Report on Preferential Regimes, with results demonstrating that jurisdictions have delivered on their commitment to comply with the standard on harmful tax practices, including ensuring that preferential regimes align taxation with substance.

The report also delivers on the Action 5 mandate for considering revisions or additions to the FHTP framework, including updating the criteria and guidance used in assessing preferential regimes and the resumption of application of the substantial activities factor to no or only nominal tax jurisdictions. The report concludes in setting out the next key steps for the FHTP in continuing to address harmful tax practices.

7. Commission welcomes agreement on proposal to facilitate sales of goods and supply of digital content and services in the EU

The European Parliament and the Council reached a provisional agreement this month on the European Commission's proposals regarding the online sales of goods and supply of digital content and services. In conjunction with the regulation to end unjustified geoblocking that entered into force in December 2018, the new agreement on digital contract rules is the latest achievement of the Digital Single Market Strategy, delivering concrete benefits to citizens and businesses.

The texts must now be formally adopted by the European Parliament and the Council of the EU. Following final adoption, the Directives will be published in the EU's Official Journal and enter into force 20 days later.

8. Commission refers Germany to the Court for its failure to align with EU rules on VAT refunds

On 24 January, as part of the EU January Infringement Package, the EU Commission decided to refer Germany to the Court of Justice of the EU for rejecting certain applications for VAT refunds for businesses in other Member States.

Germany refuses in some cases to refund VAT without asking for additional information from the refund applicant where it considers that the information provided on the nature of the goods and services provided is insufficient for coming to a decision on the application. This practice leads to situations where a VAT refund is denied to applicants that fulfil the substantive requirements, and violates the right to a VAT refund established under the EU rules and the Refund Directive.

9. Finland-Portugal Tax Treaty Terminated

The Portuguese Government has confirmed in a notice published in its Official Gazette that Portugal's tax treaty with Finland has been terminated effective January 1, 2019.

The 1970 double tax avoidance treaty between the two counties was terminated by Finland in June 2018 because the treaty was not consistent with Finland's current tax treaty policy. The Finnish Government said that the treaty restricts its "right to tax private pensions received in Portugal from Finland." The termination decision ensures that Finland will be able to tax the private pensions of Finns residing in Portugal.

Portugal currently grants 10-year tax holidays to foreign pensioners who meet certain criteria – an incentive that has lured retired expats from all over Europe, including from Finland.

A revision to the treaty - which was signed in November 2016 - would, according to the Finnish Government, have provided Finland with "more opportunities" to tax the income of Finns residing in Portugal. However, the Portuguese Government failed to complete its ratification procedures.

10. France Hoping For Deal On EU Digital Tax Soon

France's Finance Minister Bruno Le Maire has said that an agreement on an EU-wide digital services tax could be reached by the end of March 2019.

EU finance ministers have so far been unable to reach an agreement on the European Commission's proposed 3% excise tax on turnover from certain online activities.

Austria, the previous holder of the European Council Presidency, has recommended a compromise scheme under which the EU would target "revenues stemming from the supply of digital services where users contribute significantly to the process of value creation." A separate compromise proposal, put forward by France and Germany in December 2018, would rein in the scope of the measure, focusing instead on online advertising revenue.