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ECOFIN: Poland Vetoes Pillar 2 Minimum Tax Implementing Proposal

EU Finance Ministers met on 5 April at the Council of the EU's Economic and Financial Affairs Council configuration. Ministers failed to reach agreement on the EU Directive on the implementation of the OECD's Pillar 2 minimum corporate income tax at the meeting after Poland invoked its veto, on the basis that it is not prepared to move forward on the implementation of Pillar 2 without it being "legally tied" to the implementation of Pillar 1. A recording of the discussion can be viewed [here](#). This comes notwithstanding changes in the [revised compromise text](#) published ahead of the March meeting, the most significant of which being that the time limit for transposition has been changed to 31 December 2023, instead of 31 December 2022.

Following the meeting, Executive Vice-President Dombrovskis stated that the Commission *"regret that agreement was not possible in today's ECOFIN and would like to commend the French Presidency's outstanding work and commitment to make sure that there is consensus and agreement on this important file. We do hope that this agreement will be possible at the next ECOFIN."*

CFE Tax Advisers Europe has issued an [Opinion Statement](#) on the ongoing process that seeks to enact the Pillar 2 political agreement into the legal order of the EU and other states. CFE's reservations on the proposed EU Directive implementing Pillar 2 are principally focused on the complexity, the ambitious implementation timeline and lack of opportunity for meaningful engagement with stakeholders in developing the model rules, on which the EU directive is based.

CFE finds it problematic that subsequent iterations of the EU Compromise text as discussed by the Member states' representatives refer to later OECD commentary as regards rules of interpretation. As discussed in more detail in CFE's statement, recourse to OECD guidance to interpret provisions of EU law is extremely problematic for reasons of legal certainty. CFE strongly suggests the directive should establish a link with the entering into force and effective implementation of Pillar 2 by most of the jurisdictions participating to the Inclusive Framework. In the opinion of CFE Tax Advisers Europe, the proposed directive should come into force and be effectively applicable only as of the year following that in which at least 2/3 of the members of the Inclusive Framework have effectively introduced the necessary legislation so as to apply the OECD Pillar 2 rules.

We invite you to read the [Opinion Statement](#) and would welcome any feedback or queries concerning the position paper.

[AG Opinion in Belgian DAC6 Legal Privilege Challenge Case: C-694/20 *Orde van Vlaamse Balies*](#)

The Advocate General Opinion in [Case C-694/20 *Orde van Vlaamse Balies*](#), concerning whether or not the obligations under the Directive on Administrative Cooperation infringes upon the right to privacy and the right to a fair trial under Articles 7 and 47 of the Charter of Fundamental Rights of the European Union, respectively, was handed down on 5 April 2022.

The Advocate General Rantos in his opinion held that the requirement to notify another intermediary of the reporting obligations does not form part of any legal proceedings and therefore does not constitute a breach of the right to a fair trial. In relation to the right to privacy, AG Rantos held that should the identity of the intermediary be made known in fulfilment of the reporting requirement, this could constitute a breach of the right, but that the breach would not occur should the name of the intermediary not be disclosed.

AG Rantos accordingly concluded in his Opinion that the ECJ should hold that Article 8ab(5) of DAC6, by requiring a lawyer who acts as an intermediary and who, by relying on his professional secrecy, has a declaration waiver to notify without delay to another intermediary the reporting obligations incumbent upon it under paragraph 6 of this Article, does not infringe upon the right to respect for private life guaranteed by Article 7 of the Charter of Fundamental Rights of the European Union, provided that that the name of this lawyer is not disclosed to the tax authorities in the context of the performance of the obligation to declare provided for in Article 8bisb, paragraph 9, second subparagraph, and paragraph 14, of that Directive.

The decision of the Court is expected in the coming months.

[Register Now: CFE Forum 2022 on 12 May 2022 in Brussels](#)

CFE Tax Advisers Europe's [2022 Forum](#) will be held on 12 May 2022 in Brussels on the topic of *“The Future of Holding Companies & VAT Grouping in the Current Tax Policy Climate”*. The conference will examine issues surrounding the European Commission’s Unshell Proposal and how policy developments affect the use of holding companies and VAT groups across tax structures.

Speakers from a wide range of stakeholder perspectives will examine issues raised by the Commission's proposal, legitimate uses of holding companies, and problems with the divergence in approaches throughout the EU on VAT grouping. More details about the programme, line-up of speakers and the registration link for the event is available [here](#).

OECD Consultation on Draft Model Rules for Domestic Legislation on Scope & Global Minimum Tax Implementation Framework Consultation

The OECD has now launched a [consultation](#) concerning *Draft Model Rules for Domestic Legislation on Scope* under Amount A of Pillar One. The consultation states that *"the purpose of the scope rules is to determine whether a Group will be in scope of Amount A. The rules are designed to ensure Amount A only applies to large and highly profitable Groups and have been drafted to apply in a quantitative manner, such that they are readily administrable and provide certainty as to whether a taxpayer is within scope. The Draft Rules for the Exclusions for Extractives and Regulated Financial Services will be released for public consultation at a later date."* This consultation forms part of a series of consultations taking place in 2022 concerning the Pillar 1 solution to address the tax challenges arising from digitalisation and globalisation of the economy.

Input is being welcomed by the OECD until 20 April 2022. The input should be in electronic format (Word documents) and submitted via e-mail in Word format to tfde@oecd.org, to the attention of: Tax Treaties, Transfer Pricing and Financial Transactions Division OECD/CTPA.

Following the release of the [Global Anti-Base Erosion \(GloBE\) Rules](#) as part of a landmark agreement on a two-pillar solution and the related [Commentary](#), and the consultation on the Implementation Framework for the Rules, a public consultation meeting will now be held concerning the implementation of global minimum tax. This will take place on 25 April 2022 from 12:00 - 16:30 CEST. Further details and registration information is available [here](#).

Forum on Tax Administration: Inventory of Tax Technology Initiatives

The OECD's Forum on Tax Administration has published an [Inventory of Tax Technology Initiatives](#). The inventory contains information on digital solutions implemented by 76 tax administration through the world. The inventory will be expanded in the future to include case studies and links to supporting materials, in order to provide developing countries with a one-stop-shop on digitalisation initiatives in tax administration.

Director of the OECD Centre for Tax Policy and Administration, Pascal Saint-Amans, said of the new initiative: *"This new web-based inventory, developed in a unique global collaboration, is an important tool for tax administrations globally, helping to identify opportunities for significantly reducing both tax gaps and administrative burdens. It is underpinned by the recently published [Digital Transformation Maturity Model](#) which allows administrations to understand their current level of digital development and supports the further development of digitalisation and digital transformation strategies."*

The selection of the remitted material has been prepared by:
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia