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European Parliament Calls For Swift Reform of International Tax Rules

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The European Parliament has adopted Resolution 2021/2010/INI calling on international stakeholders to speed up the process of adoption and implementation of the international taxation framework, currently under multilateral negotiation at the OECD.

European Parliament is seeking to put pressure on the process, suggesting immediate overhaul of the "outdated international tax rules, including a minimum effective corporation tax rate". The resolution calls on the European Commission and the Council to "go ahead alone" should the negotiations fail at OECD level. One of the key demands of the European Parliament is a 21%

global minimum tax rate, in support of the recent proposals from President Biden's administration. Members of the Parliament sought to support a minimum effective tax rate set at a "fair and sufficient level to discourage profit shifting and prevent damaging tax competition." Should the OECD negotiations fail to produce an agreement by July 2021, the Parliament expects the EU Commission to produce a new proposal on digital services tax and and a Commission road map with different scenarios, with or without agreement at OECD level. The resolution was adopted 549 votes in favour, 70 against and 75 abstentions.

Andreas Schwab, Member of European Parliament from Germany and co-rapporteur said at the plenary: “We have had a big problem in the last few years with digital services because they have been taxed more lightly than traditional ones. This problem grew further during the COVID-19 pandemic. Equal treatment in taxation is not only fair but it is also necessary for fair competition. This resolution provides clear and simple guidelines for how to break away from taxing digital and traditional businesses differently.”

Margrethe Vestager, EU Commission Vice-President, recently speaking at the Taxation Subcommittee of the European Parliament, confirmed that the EU Commission does not intend to use Article 116 TFEU to circumvent the issue of voting by unanimity in taxation matters at EU level and said the article could only be invoked in appropriate circumstances.

General Courts Confirms EU's State Aid Assessment in Engie, Dismisses Amazon Case in Luxembourg

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The General Court has upheld the European Commission decision of January 2017, which established that the GDF Suez Group (now Engie) received a selective tax advantage in Luxembourg in breach of EU State aid law. The Engie case concerned discretionary double non-taxation of interest i.e. tax treatment of debt and equity in relation to zero-interest loans (ZORA). The tax rulings that the Commission looked into treated two financial transactions as both debt and equity, which was found to be inconsistent with the tax treatment of the said transactions. Such a treatment gave rise to double non-taxation, as the borrowers could reduce their tax liability in Luxembourg by deducting deemed interest payments as expense. Under the terms of the convertible zero-interest coupon the borrower can record a provision for deemed interest payment without an interest payment actually taking place.

With this case the European Commission addressed the cases of inconsistent application of national tax law that gave rise to discretionary double-non taxation. In a similar vein, the Commission opened the McDonald’s case and the interpretation of the double tax treaty between the US and Luxembourg, where the group’s income was exempt from taxation on the basis of a confirmatory ruling that concerned evaluation of the permanent establishment in the US from a Luxembourg perspective. The McDonald's case was later dismissed by the European Commission, alongside a statement issued by Commissioner Vestager stating that the double non-taxation of the franchise income of McDonald's Europe Franchising was no longer seen as problematic from an EU perspective.

On the Amazon case, which concerned profit allocation and application of TNMM as transfer-pricing method, the General Court found that the Commission did not prove the existence of State aid to the requisite legal standard and annulled the Commission decision. From a transfer-pricing perspective, the Court found that even if the ‘arm’s length’ royalty should have been calculated using the Commission's designated group company as the ‘tested party’ in the application of the TNMM, the Commission still did not establish the existence of an advantage since the Commission did not take into account the evolution of the intangible assets and the cost sharing agreement, ie. the subsequent increase in value of said intangible assets.

EU Commission Confirms No Delays in New VAT E-Commerce Rules

Speaking at the CFE Forum in Brussels, Patrice Pillet, Head of VAT at the European Commission, DG TAXUD, confirmed that there will not be a second delay to the entry into force of the new EU VAT rules concerning e-commerce/trade of goods. *"The date of 1 July is certain, all of the EU's 27 member countries have said that they will be ready for the rules when they are due to come into place"*, Mr Pillet said at the CFE Forum which discussed the effects of the new, simplified VAT rules and the resulting challenges for business and advisers.

The new rules create a simplified VAT regime for cross-border supplies of goods (B2C)/ distance sales, offer a system to declare and pay VAT in the EU using the Import One-Stop Shop (IOSS) and also level the playing field between EU businesses and non-EU sellers.

EESC Event on Disrupted Value-Chains & Post-Covid Recovery

The European Economic and Social Committee (EESC) is holding an online event on the disruption of value chains and how to address the challenges businesses are facing in the COVID-19 pandemic. Panelists will also discuss the impact of the Digital Green Certificate proposed by the EU on the postpandemic recovery and the resumption of activity intra-EU and between EU and other countries.

The event will be live streamed on 17 May 2021 at 16:00 CEST on the following link.

OECD Publish Inheritance Tax Report

The OECD has published a report on Inheritance Tax in OECD Countries, comparing inheritance tax, estate and gift taxes across OECD countries, analysing the roles these taxes have to play in raising tax revenues, and identifying means of reforming the taxes for countries to improve the function of inheritance, estate and gift taxes.

Wealth inequality, economic recovery from the COVID-19 pandemic, an ageing population and wealth concentration amongst older age groups will reinforce inequality, and highlights the need for tax administrations to examine the issue of inheritance, estate and gift taxes. The report aims to assist tax administrations in this process.

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