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Agreement on Digital Tax Within Reach After US Policy 'U-Turn'

This week's key tax policy news comes from Washington DC. The new US Secretary of Treasury Dr Janet Yellen confirmed that President Biden's administration is ready to drop the 'safe harbour' requirement, a key obstacle to an international agreement on Pillar One concerning taxation of the digital economy. At the G20 meeting on Friday, Secretary Yellen said the US was no longer advocating for safe harbour implementation, and will engage robustly to address both pillars of the OECD project, the tax challenges of digitisation and a robust global minimum tax, a US official was quoted for the Financial Times. Secretary Yellen's letter to G20 ministers also focused on urging countries to continue to take significant fiscal and financial policy actions: *"If there was ever* *a time to go big, this is the moment. We must make sure that the benefits of international trade and investment are realised by our workers and consumers. Together, our efforts will be greater than the sum of our individual responses. Together, we can build a better, stronger, more even global recovery."*, Secretary Yellen said.

The OECD Secretary-General Angel Gurría presented a report to G20 Finance Ministers and Central Bank Governors, providing an overview of the activities and achievements in the OECD's international tax agenda as mandated by the G20. In an upbeat message to the G20 officials, the Secretary-General said: "*Today, all the conditions to find a consensus-based solution by the July meeting of G20 Finance ministers are met. First, we have a solid technical basis with the Blueprints of Pillar One and Pillar Two, which you welcomed in October. Public comments have since called for simplifications which can be advanced by July to make both Pillars fully implementable. Second, the political conditions for a deal in July are present with very strong and positive messages from the new US Administration. This constructive attitude to "re-energise the negotiation" echoes the strong signals from the Ministerial roundtable at the first public meeting of the G20/OECD Inclusive Framework in January- "let's get it done!" Reaching a solution between now and your July meeting will only be achieved with your strong leadership and unequivocal political support and involvement."*

These developments were welcomed by the EU and the G20 finance ministers, who expressed their unequivocal support for the reform, in particular for agreement on the two-pillar reform of the international tax rules by July 2021. To that end, a High Level Tax Symposium and a Conference on Climate will be held in Venice in July to tackle these and other issues, such as equitable access to vaccines for all countries, and a transition towards more sustainable and equitable post-Covid world.

EU Ministers Endorse Public Country-by-Country Reporting

The latest Competitiveness Council meeting of EU's Industry and Internal Market ministers saw a clear majority of EU countries endorse the latest proposal for a directive on public country-by-country reporting (CbCR), which seeks to add further transparency to the taxation affairs of multinational companies doing business in the Single Market. The Council invited the Council Presidency to start negotiations with the European Parliament on enacting this directive. On behalf of the EU Presidency, a Portuguese Minister stated: "*Tax transparency is a fundamental principle in any democratic society. It enables policy makers to take informed decisions and to ensure that all economic actors contribute in a fair and equitable manner to the economy of the various countries where they conduct their business. Today's debate has opened the way for the proposed directive to move forward as a matter of priority.",* Mr Pedro Siza Vieira, Portuguese Minister of State for the Economy and Digital Transition said.

These developments at EU level coincide with UN International Financial Accountability, Transparency and Integrity Recommendations on how to strengthen the global fight against illicit financial flows and tax avoidance, with a key recommendation for governments to introduce public CbCR.

Commenting, the EU Parliament negotiator on public CbCR, Evelyn Regner MEP said: *"We are ready to start negotiations with EU ministers to deliver on this crucial tool in the fight against tax evasion and tax avoidance. Our goal is a public country-by-country reporting that ensures meaningful financial transparency. Therefore, we want companies to disclose information in all countries they operate in, both in the EU and in third countries. To turn public* *country-by-country reporting into a sharp weapon against tax crimes, we want to oblige multinationals to reveal the number of all full-time employees, fixed assets and capital, net turnover, all profits and losses, as well as subsidies received by governments.* As governments are helping companies out with public money to cope with the impact of the Covid-19 pandemic, tax payers have more than ever the right to know which big multinationals are playing fair and which are free-riding."

The so-called 'trialogue' negotiations, which began in July 2017, were blocked in Council by member states opposing public CbCR. In October 2019, the Parliament passed a resolution calling on member states to conclude the first reading on public CbCR and enter inter-institutional negotiations with the Parliament. With the progress secured by the Portuguese presidency, the Council will now enter negotiations with the EU Parliament.

OECD Calls on Countries to Target Professional Enablers of Tax Crimes

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The latest OECD Report entitled "*Ending* the *Shell Game*: *Cracking down* on the *Professionals* who *enable Tax* and *White Collar Crimes"* calls on governments to target professional enablers of tax crimes and other white collar crime, facilitated through complex legal and tax structures. The report notes that whilst the vast majority of intermediaries such as tax advisers, lawyers, notaries and financial institutions contribute to making complex tax and legal systems work, the small minority of professional enablers continue to play key role in defrauding governments and help clients evade their tax obligations. The means of doing so continue to be focused on non-transparent structures and schemes seeking to conceal the identity of individuals behind the activities.

Key elements of the report call on countries to develop strategies that would:

- ensure that tax crime investigators are equipped to identify the types of professional enablers operating in their jurisdiction, and to understand the risks posed by how they devise, market, implement and conceal tax crime and financial crimes;
- ensure the law provides investigators and prosecutors with sufficient authority to identify, prosecute and sanction professional enablers, both to deter and penalise;
- implement multi-disciplinary prevention and disruption strategies, notably through engagement with supervisory, industry and professional bodies, to prevent abusive behaviour, incentivise early disclosure and whistle-blowing and take a strong approach to enforcement;
- ensure relevant authorities proactively maximise the availability of information, intelligence and investigatory powers held by other domestic and international agencies to tackle sophisticated professional enablers operating across borders;
- appoint a lead person and agency in the jurisdiction with responsibility for overseeing the implementation of the professional enablers strategy, undertake a review of its effectiveness over time and devise further changes as necessary.

The OECD report will be discussed at the OECD Global Anti-Corruption and Integrity Forum on 24 March at 16:45, open for stakeholders and the general public to register to attend.

OECD Tax Talks: Save the Date & Register

The latest OECD Tax Talks edition will be held online on Thursday 4 March from 16:00-17:00 CET. It is expected that officials from the OECD Centre for Tax Policy and Administration will deliver update on the state of play regarding the tax challenges of the digitalisation of the economy. Registration is open via Zoom on the following link.

ECJ Judgment in C-403/19 *Société Générale* (Double Juridical Taxation of Dividends)

The Court of Justice delivered a judgment concerning elimination of double juridical taxation of dividends in case C-403/19 Société Générale SA. The case concerned a request for preliminary ruling from the Conseil d'État (France) regarding the case of *Société Générale SA v. Ministre de l'Action et des Comptes publics*. Conseil d'État question concerned interpretation of Article 63 of TFEU, and whether compensation for the double taxation of dividends paid to a company liable for corporation tax in the Member State of residence by a company resident in another Member State is liable to create a disadvantage of foreign companies, by virtue of the exercise by that Member States of the power to withhold tax.

The Court of Justice, recalling its well-established case-law in *Kerkhaert-Morres* and *Gilly,* ruled that Article 63 of the Treaty does not preclude the application of the credit method provided by a double tax treaty. The disadvantage of which the company complained was a result of the difference of tax base as applied in the source State for purposes of withholding tax and the tax bases in the residence State for purposes of corporate income tax. According to settled case-law, ECJ stated, such computation of the basis for tax assessment (regarding the shareholder who receives dividends) is not in breach of the free movement of capital. Different treatment which occurs as a result of parallel exercise of taxation powers by different Member states, to the extent it is not discriminatory, does not constitute a restriction to the free movement of capital protected by the Treaty.

Citing settled case-law (paragraph 46 *Gillly*- paragraph 39 of the judgment), ECJ reiterated that the that "the objective of a double tax treaty is to prevent the same income from being taxed (twice)- in each of the two States. It is not to ensure that the tax to which the taxpayer is subject in one State is no higher than that to which they would be subject to in the other", the ECJ concludes.

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