tax advisers europe

BRUSSELS | 27 SEPTEMBER 2021

Member States Challenge Legal Basis for Public CbCR

In statements issued at the EU Council's first reading of the draft public CbCR directive, several Member states have rejected the legal basis of the legislative proposal, namely Croatia, Cyprus, the Czech Republic, Hungary, Ireland, Luxembourg, Malta and Sweden. The countries all set out in the statements that they are of the view that given *"both the aim and the content of the proposal relate to 'fiscal provisions' ",* that the proposal for the directive should be based on Article 115 TFEU, not Article 50(1). Croatia also specifically stated that it *"is of the opinion that the agreed Proposal should not become precedent for a qualified majority voting in the future decision-making process in regard to tax matters."*

Although the directive concerns disclosure of information, specifically income tax related information, it remains to be seen what will come of the challenge by the Member states, given the directive cannot qualify as a tax directive given the intended purpose is transparency not taxation.

Increasing Pressure Put on Countries to Reach Global Tax Deal

---

Over the past week, holdout countries have been put under increasing pressure concerning the ongoing OECD negotiations on the historic two-pillar agreement on international corporate taxation, and removal of unilateral digital taxes.

To that end, US Treasury Janet L. Yellen published a statement following a discussion with French Finance Minister, Bruno Le Maire, setting out that Secretary Yellen *"stressed the importance of reaching a compromise on the withdrawal of digital services taxes...she...also discussed with Finance Minister Le Maire the need for continued cooperation between the U.S., France, and other G20 members to enhance support for low-income countries to mitigate further divergence in the global economic recovery. "* This follows on from visits last week by French President Macron and EU Commissioner for the Economy, Paolo Gentiloni to visit Ireland to discuss the OECD negotiations with Irish Minister for Finance, Paschal Donohoe. Following the meetings, Mr Donohoe stated in a parliamentary hearing that Ireland had not definitely decided against the deal.

A press release issued following the most recent ECOFIN confirmed the Council was working to get all EU Member States on board with the deal. Presently, Ireland, Hungary and Estonia are the holdout jurisdictions from the EU on the deal. Recently, the G24 countries published comments submitted to the OECD on the two-pillar deal, stating that the *"G-24 favours a high minimum effective tax rate under the GloBE rules as well as a high minimum rate on gross revenue under the STTR, allowing jurisdictions to tax back a higher portion of income that has not paid its fair share of taxes elsewhere (in particular, in low tax jurisdictions)".*

Further detail on the OECD agreement is expected in October.

EU Commission September Infringement Package

The European Commission has published its infringement package for September 2021 setting out the legal action being pursued against various Member States by the Commission for noncompliance with obligations under EU law.

The Commission has issued a letter of formal notice to Cyprus for failing to correctly transpose the interest limitation rule in Article 4 of the Anti-Tax Avoidance Directive, as its domestic legislation provides for unlimited deductibility of interest for the purpose of Corporate Income Tax for securitisation entities, going beyond the allowed exemptions. Cyprus has two months to respond to the issues raised by the Commission before a reasoned opinion is issued. Also relating to the Anti-Tax Avoidance Directive, the Czech Republic has been issued with a letter of formal notice for failure to communicate all required national measures as regards hybrid mismatches with third countries. The Czech Republic also has two months to respond to the letter of formal notice before a reasoned opinion is issued.

In relation to indirect taxes, the Commission issued a reasoned opinion to Italy for failing to notify the Commission of measures for the transposition into national law on the EU directive concerning the VAT "Quick Fixes". Member States were required to adopt and publish provisions by 31 December 2019. Italy now has two months to act following the opinion being issued, failing which the Commission may refer the matter to the Court of Justice.

FISC Subcommittee Tax Priorities

To celebrate the one year anniversary of the creation of the EU Parliament's Permanent Subcommittee on Tax Matters ("FISC"), the coordinators of the political groups in the committee have created a video setting out their views on the tax challenges and priorities for FISC, noting that *"the fight against tax fraud, tax evasion and tax avoidance remains high on the agenda in the light of recent tax scandals".*

The video can be viewed here.

Save the Date: CFE Professional Affairs Virtual Conference - 25 November 2021

Save the date for the 14th European Conference on Tax Advisers' Professional Affairs, to be held virtually on Thursday, 25 November 2021 from 10:00AM to 12:00PM CET, on the topic of *"Professional Judgment in Tax Planning - An Ethics Quality Bar for All Tax Advisers".* Speakers from a wide range of stakeholder perspectives will examine issues raised in the discussion paper published by CFE seeking to promote ethical professional judgment across all tax advisers in Europe, through the proposed "ethics quality bar" contained in the paper, based on five questions that all tax advisers should reflect on when undertaking their advisory role in the overall tax system. Panellists will consider whether the quality bar can help to steer all advisers in the direction of an appropriate balance between the rights and obligations of taxpayers, avoiding abusive planning.

Registration for the event is possible via this link. More details about the programme, line-up of speakers and registration will be available in due course.

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