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ECJ Rules Public Access to Beneficial Ownership Registry Information Invalid - Joined Cases C-37/20 & C-601/20

The European Court of Justice last week ruled in joined cases C-37/20 & C-601/20 *WM and Sovim SA v Luxembourg Business Registers* that a provision in Luxembourg's national legislation implementing the EU Anti-Money Laundering Directive (Directive (EU) 2018/843) rules requiring that information contained in the beneficial ownership registry be made accessible online for all members of the public was invalid.

The Court held that the provision was invalid in light of its serious interference with the fundamental rights to respect for private life and to the protection of personal data, enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. The Court held that the

interference of the anti-money laundering legislative provision with the above rights guaranteed by the Charter was neither limited to what was strictly necessary nor proportionate to the objective pursued by the anti-money laundering legislation. As such, the Court has by its decision struck down the requirement under AML rules that Member States must ensure that information on the beneficial ownership of companies and of other legal entities incorporated within their territory is accessible in all cases to any member of the general public.

The decision of the Court to strike down the anti-money laundering legislative provision may have implications for EU tax legislation in future decisions of the Court, in the instance that any provision in existing or proposed tax legislation also infringes upon articles within the Charter of Fundamental Rights of the European Union.

G20 Summit Leaders' Declaration on OECD's Two-Pillar Solution

Following on from the 17th G20 Summit, which was held in Indonesia from 15 - 16 November, the leaders issued a [G20 Bali Leaders' Declaration](#) reaffirming international commitment to the implementation of the OECD Inclusive Framework's [Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy](#).

Leaders in the declaration welcomed progress on Pillar One and Two, and reaffirmed their commitment to completing the GloBE Implementation Framework establishing administrative and safe-harbour rules for MNEs and tax authorities. The leaders further called on the Inclusive Framework to finalise the outstanding work packages under Pillar One, and sign the Multilateral Convention in the first half of 2023, as well as to complete negotiations on the

Subject to Tax Rule under Pillar Two to allow the development of a multilateral instrument for implementation.

The leaders also expressed their commitment to "strengthen the tax and development agenda in light of the July 2022 G20 Ministerial Symposium on Tax and Development", as well as to implementing internationally agreed tax transparency standards, setting out their support for the Crypto-Asset Reporting Framework and called on the OECD to conclude work on the implementation packages, including timelines.

EU Commission Publishes Customs 2020 Evaluation Report

The EU Commission has now published the final [evaluation report](#) for the Customs 2020 programme, established to facilitate the cooperation between the customs administrations. Customs 2020 is a multi-annual action programme concerning customs in the EU, providing for resources for the European Information Systems for customs and for facilitating cooperation between administrations. This report is the final evaluation of the Customs 2020 programme.

The report summarises that Customs 2020 was a useful means to exchange best practice information between authorities participating, and that it helped in the preparation of new legislative initiatives, contributing to the modernisation of the Customs Union. The training activities from the Programme have also reportedly played an important role in supporting a more coherent application of the new customs legislative framework. A series of recommendations have also been put forward following from the mid-project assessment, which will be incorporated into the 2021 - 2027 Customs programme.

OECD Publishes Updated Mutual Agreement Procedure Statistics

The OECD has made available the updated 2021 [Mutual Agreement Procedure Statistics](#) concerning 127 jurisdictions, covering almost all MAP cases worldwide. The information forms part of the BEPS Action 14 Minimum Standard, Making Dispute Resolution Mechanism More Effective, which contained a commitment by jurisdictions to implement a minimum standard to resolve treaty-related disputes in a timely, effective and efficient manner, and timely and complete reporting of MAP statistics pursuant to an agreed reporting framework.

The OECD summary sets out that the [2021 MAP Statistics](#) show the following trends:

- **Significantly more MAP cases were closed in 2021.** *Approximately 13% more MAP cases were closed in 2021 than in 2020, with both transfer pricing cases (+22%) and other cases (almost +7%) closed being significantly more than in 2020. Competent authorities were able to close more cases in 2021 due to the greater use of virtual meetings, the prioritisation of simpler cases and greater collaboration to solve common issues collectively that could be applied across multiple MAP cases. Further, jurisdictions noted that increases in staff and the experience of these staff are now reflected in their ability to be able to resolve more cases.*
- **Fewer new cases in 2021.** *The number of new MAP cases opened in 2021 decreased (almost -3%) (see [trends since 2016](#)) compared to 2020. This is attributed to a significant decrease in new transfer pricing cases being opened (almost -10.5%), while the number of other cases opened increased (almost +4%) compared to 2020.*

- **Outcomes remain generally positive.** Around 75% of the MAPs concluded in 2021 fully resolved the issue both for transfer pricing and other cases (similar to 76% for transfer pricing cases and 74% for other cases in 2020). Approximately 2% of MAP cases were closed with no agreement compared to 3% in 2020.
- **Cases still take a long time.** On average, MAP cases closed in 2021 took 32 months for transfer pricing cases (35 months in 2020) and approximately 21 months for other cases (18.5 months in 2020). Some jurisdictions experienced delays, especially for more complex cases, and the COVID-19 crisis affected the quality of their communication with some treaty partners.
- **Competent authorities have continued to adapt.** MAP continued to be available throughout the pandemic with several actions taken by competent authorities. Jurisdictions noted that, especially towards the end of 2021, there has been an increase in MAP engagement with treaty partners. Further, while jurisdictions welcomed the resumption of face-to-face meetings, the continued use of virtual meetings has allowed for opportunities to progress individual cases in between face-to-face meetings. This hybrid approach is a welcome practice that many jurisdictions continue to apply to expedite MAP resolutions and improve the efficiency and effectiveness of their MAP programmes.

Final Reminder: CFE Conference "Targeting the "Bad Apples": Enablers of Tax Avoidance"; Zagreb, 2 December 2022

CFE's 15th European Conference on Tax Advisers' Professional Affairs will be held in Zagreb, Croatia, this Friday 2 December 2022 from 09:30 am to 15:00 pm, organised in cooperation with the Croatian Chamber of Tax Advisers (HKPS), on the topic of ["Targeting the "Bad Apples" : Enablers of Tax Avoidance – Is it Still a Substantial Problem in Europe?"](#).

Keynote speakers in the first panel will include Benjamin Angel, Director in the European Commission, DG TAXUD and Paul Tang, Chair of European Parliament's Taxation Committee (FISC); Philippe Vanclooster, CFE; moderated by Dr. Sc. Nevia Čičin - Šain, Assistant Professor of Law, WU Vienna University of Business and Economics. Opening remarks will be provided by Piergiorgio Valente, President of CFE; Damir Brajković, President of the Croatian Chamber of Tax Advisers and a representative of the Ministry of Finance of the Republic of Croatia.

The second panel of speakers includes Judge Barbara Porizkova, Supreme Court of the Czech Republic; Dr. Ivan Čevizović, Croatian Chamber of Tax Advisers; Natalie Aymé, Partner Deloitte France; and Tomas Urbasek, Partner PwC Czech Republic, moderated by Aleksandar Ivanovski, Director of Tax Policy, CFE.

Further information and the registration page for the event can be found [here](#).

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