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EU Commission Launches Public Consultation on a New EU System for Withholding Taxes

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The European Commission has launched a public consultation questionnaire on a new EU-wide system for withholding taxes. Input received will feed into the upcoming legislative initiative planned for adoption in Q4 of 2022, which aims to introduce a common EU-wide system for withholding tax on dividend or interest payments. The draft legislation aims to remove barriers to cross-border investment and will also include a system for the exchange of information between tax authorities.

The EU Commission Inception Impact Assessment sets out that *"According to the most recent publicly available data from 2016 costs related to withholding*

tax refund procedures, foregone tax relief and opportunity costs are estimated to a value of EUR 8.4 billion annually...When an EU resident makes an investment in securities in another Member State, the payments received in return (dividends or interest) are normally subject to a withholding tax in the country of the investment (source country), at a rate which is often higher than the reduced rate on the basis of an applicable bilateral Double Taxation Convention (DTC). Where this applies, in order to eliminate the double taxation, the nonresident investor is then required to submit ex-post a refund claim of the excess tax withheld by the source country. The current procedures can be abused as shown recently by an investigation carried out by a consortium of investigative journalists that reported the existence of an alleged large-scale tax fraud known as "Cum/Ex" scheme and subsequent "Cum/Cum" Scheme in some EU Member States. In addition, such withholding tax relief mechanisms for cross-border payments have proved to be lengthy, resource-intensive and costly for both investors and tax administrations due to the lack of digitalized procedures and the existence of complex and divergent forms across Member States. In some cases, these high costs drive non-resident taxpayers to forego their right to apply for the tax treaty benefits that they are entitled to, thereby leading to double taxation and as a consequence to less attractive net returns than for domestic investments. The existence of inefficient, burdensome and costly procedures for the recovery of excess tax paid in a cross-border context discourages cross-border investment in the Union."

The policy options being considered for the new legislative proposal are as follows:

Option 1: Improving withholding tax refund procedures to make them more efficient: This option entails the implementation of several measures, the objective of which is to simplify and streamline withholding tax refund procedures by making them quicker and more transparent.. These measures

are not limited by but could include: the establishment of common EU standardised forms and procedures for withholding tax refund claims irrespective of the Member States concerned and the obligation to digitalise current paper based relief processes.

Option 2: Establishment of a fully-fledged common EU relief at source system: This option entails the implementation of a standardised EU-wide system for withholding tax relief at source whereby the correct withholding tax rate, as provided in the DTC is applied at the time of payment by the issuer of the security, to the non-resident investor thereby not incurring double taxation.

Option 3: Enhancing the existing administrative cooperation framework to verify entitlement to double tax convention benefits: This option envisages a reporting and subsequent mandatory exchange of beneficial owner-related information on an automated basis, to reassure both the residence and source country that the correct level of taxation has been applied to the non-resident investor.

The consultation sets out questions concerning the above policy options, and will be open for input until 24 June 2022. Feedback can be provided via the Have Your Say website.

CFE Tax Advisers Europe Opinion Statement: Pillar 2 Proposal Requires Further Revision Before Entry Into Force

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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 welcomes the historic agreement on the global tax reform with a key objective of stabilising the international corporate tax framework arising from the challenges of the digitalising economy. In this

respect, CFE also welcomes EU's commitment to ensure that the global rules are enacted in the EU legal order through an EU-wide coherent framework. CFE is however concerned that this exercise, at both OECD and EU level, does not amount to meaningful engagement with stakeholders as Member states have proceeded with amendments to the Commission proposal while the public consultation at EU level is still ongoing.

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. This makes it difficult to conceivably provide input that would be considered and incorporated in the draft directive. CFE notes that this is one of the most significant reforms of international tax rules for many years and stresses that it therefore merits full and detailed discussion and consideration. The consultation process at OECD level is not sufficient to cover consultation with relevant stakeholders for the purposes of EU law.

In light of the above, CFE finds it problematic that subsequent iterations of the EU Compromise text as discussed by the Member states representatives refers to subsequent 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.

The issue of the future of Member states CFC legislation is being raised with the introduction of the Income Inclusion Rule in the EU legal order. As noted by the OECD, the Income Inclusion Rule is drafted with reference to the modus operandi of CFC rules. CFE would welcome a dialogue on the interaction of the CFC rules with ATAD/ ATAD3/ Unshell proposal given the interconnection of these rules and the same underpinning objective - taxation of shareholders as if an entity did not exist. In light of the above, CFE suggests further postponement of entry into force due to the inherent complexity and ambiguity of the OECD Model Rules on Pillar 2 and the need of taxpayers, advisers and tax administrations to get acquainted with these rules before they become operational. Few countries of the Inclusive Framework have the resources to implement these rules, and certainly they could not put in place these measures in the desired timeframe.

We invite you to read the Opinion Statement and would welcome any feedback or queries concerning the position paper.

OECD Release Reporting Format for Exchange of Information on Digital Platform Sellers

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The OECD has released a standardised IT-format for reporting and exchange of information concerning digital platform sellers under the OECD's *Model Reporting Rules for Digital Platforms*.

The OECD sets out that the Rules *"were developed in light of the rapid growth of the digital economy and in response to calls for a global reporting framework in respect of activities being facilitated by such platforms, in particular in the*

sharing and gig economy. Activities facilitated by platforms may not always be visible to tax authorities or self-reported by taxpayers. At the same time, the platform economy also permits increased access to information by tax administrations, as it brings activities previously carried out in the informal cash economy onto digital platforms. As such, the Model Reporting Rules for Digital Platforms are designed to help taxpayers in being compliant with their tax obligations, while ensuring a level-playing field with traditional businesses."

The new standardised reporting format aims to minimise burdens on digital platform operators that would follow if different jurisdictions were to adopt different reporting requirement standards, and in order to be compliant with the exchange of information under the EU Directive on Administrative Cooperation (DAC7).

EU Parliament Adopts Resolution on AML Crypto-Reporting Rules

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Members of the EU Parliament from the Committee on Economic and Monetary Affairs (ECON) and the Committee on Civil Liberties (LIBE) have now adopted, with 93 votes to 14 and 14 abstentions, their position on draft legislation strengthening EU rules against money laundering and terrorist financing. The draft legislation forms part of the new EU AML legislative package, and aims to ensure that crypto-assets are able to be traced in the same way as other monetary transfers. Under the proposed legislation, information on the source of crypto-assets being transferred, and their beneficiaries, will need to be made available to the relevant authorities, including identification of private users of crypto-asset wallets. Person to person transfers conducted without a provider will not be covered by the proposed legislation.

MEPs in their position on the draft legislation removed any minimum thresholds and exemptions for low-value transfers. They also call on the European Banking Authority to create a public register of businesses and services involved in crypto-assets that may have a high risk of money-laundering, terrorist financing and other criminal activities, including a non-exhaustive list of non-compliant providers.

The legislation will be voted on by the European Parliament during the April plenary session, and the Committees will thereafter commence interinstitutional negotiations with the EU Council.

Registration Open: 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.

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