BRUSSELS | 5 SEPTEMBER 2022

USA & Pillar 2: A Minimum Tax But Not the OECD Minimum Tax

Over the summer, after many months of negotiation, US Congress passed legislation titled the Inflation Reduction Act 2022, under which a 15% corporate minimum tax is imposed on corporations with profits exceeding US 1 billion, in tax years from 2023 onwards, arguably, partially implementing Pillar 2 of the OECD's 2-Pillar Agreement into national legislation. Under the legislation corporations can claim net operating losses and tax credits against the minimum corporate tax, and tax credits against the tax for minimum tax paid in previous years, if this exceeded 15% of the corporation's income in any given prior year. President Biden signed the act into law on 16 August.

In order to be deemed compliant with OECD's Pillar 2 proposal, an adaptation of the US GILTI was required, going further than the original top-up tax of 10,5% applied to profits of subsidiaries of US companies in low-tax jurisdictions. Under the original proposal of President Biden, approved by the House, the low-tax intangible income was supposed to be taxed at 15%, which would have made the US a Pillar 2 compliant jurisdiction. However, following the Build Better Act reshaping into Inflation Reduction Act 2022, the corporate tax of 15% will now apply solely to book income of MNEs with revenue of $1bn or higher, as reported in financial accounts and applied at a group level, rather than on a country-by-country basis. The impact of such, arguably, partial implementation by the US to other jurisdictions, and indeed, further implementation of Pillar 2, is at present unknown, however, given the design of Pillar 2, the difference of 4,5% (between the OECD agreed minimum of 15% and the US approved 10,5%) can now be captured by other jurisdictions.

EU's approval of the directive implementing Pillar 2 into EU is at present blocked by Hungary, following months-long opposition from Poland under the French EU presidency.

Pascal Saint-Amans to Step Down as Director of the OECD Centre for Tax Policy and Administration

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Director of the OECD's Centre for Tax Policy and Administration, Mr Pascal Saint-Amans, has announced that he is stepping down from his role and leaving the OECD as of 1 November 2022. Under Mr Saint-Amans' chairmanship of the OECD CTPA, the historic agreement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy was reached, agreeing on a 15% minimum tax for MNE corporations and revising profit allocation in the global tax system, just one of many other key achievements of the Centre for Tax Policy during his time as Director. Ms Grace Perez-Navarro will act as Director from 1 November 2022 until 31 March 2023, presumably whilst the process of appointing a new Director is carried out, and David Bradbury and Achim Pross will serve as Acting Deputy Directors during that period.

Commission President Recommends 'Windfall Tax' on Energy Profits

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The European Commission President Urusla von der Leyen has recommended to Member States that they set a maximum price for non-gas electricity producers, who are at present generating staggering excess profits due to marginal pricing, where the price of non-gas electricity being determined by the price of gas, and to redistribute excess profits to consumers to cushion the blow of soaring energy prices currently impacting the cost of living in Europe, which is understood as a form of windfall tax on excess profits. The Commission President is encouraging this rather than caps, subsidies or suspending the wholesale market.

EU energy ministers are due to meet this week under the Czech EU presidency to discuss the energy crisis and the recommendation will be examined during the meeting. Germany has already announced it is following the recommendation, and will use the tax on excess profits collected to fund a 65 Billion Euro relief package that aims to minimise the impact of inflation and energy crisis on the economy. Germany will also be making one-off payments of 300 Euro to all pensioners.

It is expected that Commission President Von der Leyen will announce further details of a plan to address the energy crisis in her annual State of the Union Speech on 14 September.

IFA Czech Republic Conference on the Use of Technology in Tax Administration & Professional Ethics in Taxes: 16 September 2022

The Czech Republic International Fiscal Association and the Chamber of Tax Advisors of the Czech Republic (KDPČR) are co-hosting a conference on 16 September in Brno, on the topic of the *"Use of technology in tax administration and the importance of professional ethics in taxes"*. The conference will focus on the use of technologies in the field of tax administration and ethics, how technologies facilitate or will facilitate tax administration, what the experience is, how collected data is processed and what it is/will be used for. A second panel will address professional ethics for tax advisors − what are the legal/ethical obligations and reputation/status of the tax profession.

Aleksandar Ivanovski, Director of Tax Policy at CFE will speak at the conference, discussing the importance of professional ethics in tax advice. Other speakers include: Ing. Jan Ronovský, Deputy Director General of the General Financial Directorate of the Czech Republic, RNDr. Ladislav Minčič, CSc., MBA, Director of the Department of Legislation, Law and Analysis, Chamber of Commerce of the Czech Republic, Ing. Ludmila Klimešová, MBA; Section Director − SFÚ-Tax Execution Section I, Marcin Sidelnik, partner of PwC Poland, Ing. Tomáš Urbášek, LL.M.; IFA/KDP ČR/partner PwC Czech Republic, JUDr. Barbara Pořízková, Vice-President of the Supreme Administrative Court, Ing. Jan Hájek, MBA, Head of Taxes at Bosch ČR and SK, tax consultant and Mgr. Ladislav Henáč, Director of the Methodology and

Management Section (Specialized Financial Office).

Further information on the conference and registration is available here.

Rentrée Refresher: EU Tax Policy Report: Semester I - January to June 2022

Prior to the summer vacation, CFE Tax Advisers Europe published its EU Tax Policy Report covering the first semester of 2022. The EU Tax Policy Report is a bi-annual publication which provides a detailed analysis of significant primary law and tax policy developments at both EU and international level that have occurred in the previous six months which would be of interest to European tax advisers. It also includes an overview of selected CJEU case-law and relevant European Commission decisions.

We invite you to read the EU Tax Policy Report, and remain available for any questions or comments that you may have.

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