



BRUSSELS | 7 NOVEMBER 2022

EU Parliament Draft Report on Tax-Related Revelations

The European Parliament heard last week the findings of MEP Niels Fuglsang (S&D, DK) who presented in the [draft report](#) of October 2022. The draft paper discusses the "Lessons learnt from the Pandora Papers and other revelations".

Key-findings include a recommendations for EU Member states to introduce cooling-off periods for tax authority officials in order to address the issue of revolving doors between legislators, authorities, multinational companies and global professional services firms in the tax advisory area; as well as full implementation of EU's Whistleblower Directive of 2019, among other issues.

The report, once adopted by the European Parliament in a form of a resolution, shall be directed at the Council of EU and the European Commission.

CFE Opinion Statement in *PRA Group Europe* on Interest Barrier & Group Contributions (EEA relevance)

The CFE has issued an [Opinion Statement](#) prepared by its ECJ Task Force on the EFTA Court decision of 1 June 2022 in Case E-3/21, *PRA Group Europe*, on the discriminatory interaction between the “interest barrier” and group contributions.

At issue in *PRA Group Europe* was the interaction of the Norwegian “interest barrier rule” (“interest limitation rule”), which generally limit the deductibility of interest payments to affiliated resident and non-resident entities to 30% of EBITDA, and the group contribution rules, which permit tax effective transfers between group members, but are limited to Norwegian entities. As group contributions also increase the EBITDA of the recipient Norwegian entity (and decrease it at the level of the paying Norwegian entity), companies in the Norwegian tax group can achieve interest deductions under the interest barrier rules where profits (“tax EBITDA”) and interest expenses are distributed unevenly between the companies in the group, while a similar opportunity to escape (or lessen the impact of) the interest barrier rules is not available to cross-border groups. The EFTA Court took a combined perspective on the interaction of those rules and found them to constitute an unjustified restriction of the freedom of establishment under Articles 31 and 34 of the EEA Agreement. The EFTA Court’s decision is particularly interesting from an EU law perspective, as the interest barrier rule of Article 4 of the Anti-Tax Avoidance Directive (ATAD) similarly foresees the option for Member States to introduce a domestically-limited “interest barrier group” to permit a calculation of exceeding borrowing costs and the EBITD at the local group level.

The CFE welcomes the EFTA Court’s progressive impetus on fundamental freedoms doctrine: *PRA Group Europe AS* makes it clear that for purposes of

identifying a restriction, for establishing comparability and for justification, a combined perspective on the interaction of two sets of rules – here the interest barrier on the one hand and the group contribution regime on the other – is necessary. From that perspective, the interaction of the Norwegian rules on the “interest barrier” and on group contributions leads to unjustified discrimination in cross-border situations.

However, if asked to decide on a similar case, the CJEU might take a different approach. First, the CJEU could take a different perspective on the available grounds of justifications and, e.g., accept the coherence of the tax system as such ground. Second, Article 4 ATAD gives the Member States the option to treat an “interest barrier group” as a single taxpayer and to limit the group perspective to domestic settings. Even if such an option in the ATAD is not viewed as “exhaustive harmonisation”, one could wonder if the mere existence of the ATAD and the value judgments made by the EU legislature therein could lead to a different outcome in the EU (CJEU) vis-à-vis the EEA (EFTA Court).

ICAEW Wyman Symposium Debates Regulation of Tax Professionals

This year’s Wyman Symposium, which took place at Chartered Accountants’ Hall in London on 1 November, asked whether regulation of the tax profession is the way forward. The symposium was chaired by Nick Parker, Chair of ICAEW’s Tax Faculty. An international panel of speakers considered various perspectives including:

- Jens Poll, IESBA, Chair of the International Ethics Standards Board working group examining tax planning and related services;
- Francesca Lagerberg, CEO of Baker Tilly International;
- Charlotte Barbour, Director of Regulatory Authorisations at ICAS;
- Aleksandar Ivanovski, Director of Tax Policy at CFE Tax Advisers Europe; and

- Grant Wardell-Johnson, Global Tax Policy Leader at KPMG International and partner with KPMG Australia.

A recording of the panel discussion can be viewed [here](#).

EU Commission 2023 Work Programme Announced

The European Commission published the work programme and [policy priorities](#) for the next year, including a more detailed annex of pending legislative initiatives.

Following on the State of the Union speech of President Ursula von der Leyen, the Commission has now set out in its priorities the BEFIT proposal on reform of EU corporate taxation. According to the Commission, "*the Union needs to further strengthen its own budget. To that end, the Commission will present a proposal for a second basket of new own resources, building on the proposal for a single set of tax rules for doing business in Europe (BEFIT). Together, these measures will ensure more diversified and resilient types of revenue and avoid undue cuts to Union programmes or excessive increases in Member State contributions. We will also carry out a mid-term review of the multi-annual financial framework 2021- 2027. We will also push to create a new European Sovereignty Fund, to ensure that the future of industry is made in Europe.*"

The only item in corporate taxation specifically enlisted for adoption in 2023 (quarter 3) is BEFIT (Business in Europe: framework for income taxation), a legislative proposal including an impact assessment, on basis of Article 115 TFEU, which requires unanimity among Member states.

Annex 3, which considers the priority pending initiatives include Proposal for a Regulation establishing a carbon border adjustment mechanism, as well

as Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union. These two files are at present in the hands of Member states at Council level.

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, on 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 Mr Benjamin Angel, Director in the European Commission, DG TAXUD and Mr 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, CFE.

Further information and the registration page for the event is available [here](#).

The selection of the remitted material has been prepared by:

Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia