

## EU Finance Ministers consider tax priorities and expansion of DAC obligations

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### Executive summary

On 1 December 2020, the Council of the European Union (the Council or ECOFIN) held a videoconference. During their meeting, the Ministers discussed the amendments to the Council directive on administrative cooperation in the field of taxation (DAC7), international tax (digital and minimum tax), the European Semester, a capital markets union, international debt relief and other topics. ECOFIN is the European Union (EU) institution where the EU Member States' competency to decide on tax matters with unanimity is executed.

The discussion on taxation followed the [Council conclusions](#) of fair and effective taxation that were adopted on 27 November 2020. The conclusions outline the Council's priorities and provide guidance to the European Commission (the Commission) in different areas of EU action. Among others:

- ▶ The EU will assess in March 2021 how to proceed on digital tax.
- ▶ DAC7 is expected to be formally adopted in January 2021 and work on DAC8 (addressing the use of alternative means of payments and investment) has started with the proposal expected in mid-2021.
- ▶ Renegotiation of the Code of Conduct blacklisting criteria will continue no later than early 2022.

The next ECOFIN is scheduled for 17 December 2020.

## Detailed discussion

The ECOFIN meeting of 1 December 2020 was held virtually due to the current COVID-19 restrictions. In light of this, and in the absence of physical presence, Ministers could not adopt any conclusion during the meeting but any adoption would follow the written procedure before or after the meeting.

The Ministers discussed various topics during their videoconference. This Tax Alert provides a summary of the key highlights.

### **Administrative cooperation in the field of taxation: agreement on DAC7**

The Council presidency informed the Ministers about the agreement reached at technical level on amendments to the Council directive on administrative cooperation in the field of taxation (DAC7).

The Council is expected to formally adopt the directive in the coming weeks, once the opinions of the European Parliament and of the European Economic and Social Committee have been received and the legal-linguistic revision has taken place.

The [revised draft of DAC7](#) as agreed by the Council still follows the objectives of the Commission's original proposal of 15 July<sup>1</sup> and it aims at:

- ▶ Introducing reporting requirements for online platforms and a related Exchange of Information (Eol) framework.
- ▶ Expanding existing administrative assistance rules, including the introduction of automatic Eol on royalties and facilitation of joint audits.

Compared to the initial proposal by the Commission on 15 July, there are some changes on the scope and the timeline for implementation of the new reporting requirements. Among others, crowdfunding activities have been removed from the scope of the proposal. Also, in the initial proposal, the new provisions would apply as of 2022. In the latest draft, EU Member States will have to adopt the proposed amendments to the DAC by 31 January 2022 and apply the new provisions from 1 January 2023. The latest draft also provides for the reporting of data no later than 31 January of the year following the calendar year in which the Seller is identified as a Reportable Seller, i.e., by 31 January 2024.

While DAC7 is awaiting formal adoption, the Commission has already started its work on the next iteration of the Directive (DAC8) with regard to the exchange of tax-relevant data for

new alternative means of payment and investment, such as cryptoassets and e-money. On 23 November 2020, the Commission released a roadmap on the future revision of the DAC8, with the feedback period for the initiative ending on 21 December 2020. The Commission expects to put forth a proposal in the third quarter.

### **Council conclusions on Capital Markets Union: Commitment to improve withholding tax (WHT) relief processes**

During the videoconference, the Council Presidency informed the Ministers about the draft [Council conclusions](#) on the Commission's new Action Plan on the Capital Markets Union (CMU) (the CMU Council conclusion). The CMU Council conclusions set out the Council's priorities among the measures outlined in the [Commission's action plan](#) in order to provide the Commission with guidance when preparing future legislation and non-legislative initiatives, that include ambitions to modernize WHT relief processes.

In two action plans, the Commission expressed concerns about the significant burden caused by divergent, burdensome, lengthy and fraud-prone refund procedures for WHTs in cases of cross-border investment. To address this, the Commission is planning to propose a common, standardized, EU-wide system for WHT relief at source. The Council plans to embrace this proposal and address this is as a medium-term priority initiative in the CMU Council conclusions. The conclusions were adopted by the Council by written procedure on 3 December 2020.

### **Council conclusions on fair and effective taxation: digital and minimum tax**

One of the agenda topics was international taxation. In light of ongoing global discussions on digital and minimum tax, the Ministers discussed the ongoing work and the way forward on a broad range of issues related to the future architecture of rules.

On that basis, the Council also approved on 27 November 2020 written procedure [conclusions](#) on fair and effective taxation which reflect its assessment of the main tax policy issues in international taxation.

The Council confirmed that the EU supports the work at the Organisation for Economic Co-operation and Development (OECD) at reaching a global consensus-based solution on digital taxation at the latest by mid-2021. It is also noted that the Council will assess in March 2021 possibilities

of implementing the global agreement to be reached at the OECD or how to proceed with an EU solution in the absence of an international consensus by mid-2021. Part of the new own resources discussion<sup>2</sup> is a digital levy that the Commission has committed to publish in June 2021 at the latest in view of its introduction on 1 January 2023 (at the latest). This requires the Commission to put forward legislative proposals during the first half of 2021.

According to the conclusions, the Council supports the discussion on the revision of the Code of Conduct mandate which has started during the German Presidency. In its [Communication of 15 July](#), the Commission had suggested to make the Code an important instrument to implement minimum tax policies. For now, Member States have concluded they will pause their discussions and “continue to discuss the scope of the mandate as soon as there are relevant developments at international level.” In any case, the Member States will continue their negotiations no later than by the beginning of 2022.

The conclusions also set out the Council’s views on other tax policy issues, such as EU value added tax rules, excise duties, and tax administration and tax compliance.

With the conclusions, the Council also approved the [ECOFIN report on tax issues](#), dated 20 November 2020, which provides an overview of the progress achieved in the Council during the term of the German Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation

## Implications

The agreement reached on DAC7 underlines the continued intention of the EU to develop and expand on tax transparency as a means of ensuring tax compliance. As the new reporting requirements are expected to be formally adopted in the coming weeks with effect from 2023, potentially affected companies should follow developments and assess what changes to their processes and technology might be needed to enable reporting of the type contemplated in the proposal.

The Council’s expected commitment to address WHT inefficiencies in the EU will be welcomed by investors, businesses and financial institutions alike. The Commission is expected to present an impact assessment and hold a public consultation.

With the Council conclusions on fair and effective taxation, the EU highlighted once again its support of the OECD work on finding a global agreement for addressing the tax challenges arising from digitalization by mid-2021. Even though the conclusions do not include details on the EU measures in absence of global agreement, they do include a commitment to “assess” the situation in March 2021. Taxpayers should monitor the potential outcome of such assessment.

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## Endnotes

1. See EY Global Tax Alert, [European Commission proposes revision of Directive on administrative cooperation](#), dated 20 July 2020.
2. See EY Global Tax Alert, [European Council adopts conclusions on recovery plan and EU budget for 2021-2027, including agreement on introduction of new taxes](#), dated 22 July 2020.

For additional information with respect to this Alert, please contact the following:

**EY Société d'Avocats, Paris**

- ▶ Jean-Pierre Lieb                      jean.pierre.lieb@ey-avocats.com

**Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Munich**

- ▶ Klaus von Brocke                      klaus.von.brocke@de.ey.com

**Ernst & Young Belastingadviseurs LLP, Amsterdam**

- ▶ Konstantina Tsilimigka              konstantina.tsilimigka@nl.ey.com

**Ernst & Young Belastingadviseurs LLP, Rotterdam**

- ▶ Marlies de Ruiten                      marlies.de.ruiten@nl.ey.com
- ▶ Maikel Evers                              maikel.evers@nl.ey.com

**Ernst & Young LLP (United States), Global Tax Desk Network, New York**

- ▶ Jose A. (Jano) Bustos                  joseantonio.bustos@ey.com

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