21 May 2019

Global Tax Alert

ECOFIN discusses digital taxation, publishes updated list of non-cooperative jurisdictions for tax purposes

NEW! EY Tax News Update: Global Edition

EY's new Tax News Update: Global Edition is a free, personalized email subscription service that allows you to receive EY Global Tax Alerts, newsletters, events, and thought leadership published across all areas of tax. Access more information about the tool and registration here.

Also available is our EY Global Tax Alert Library on ey.com.

Executive summary

On 17 May 2019, the Council of the European Union (the Council or ECOFIN) held a meeting where they discussed digital taxation and also updated the European Union (EU) list of non-cooperative jurisdictions for tax purposes (the EU List). The meeting outcomes document[1] published by the Council notes that significant progress was also made in the negotiations of measures to improve the business environment for goods subject to excise duty.

In relation to digital taxation, the Council discussed current international tax reforms with a view to preparing for the upcoming Organisation for Economic Co-operation and Development (OECD) and G20 leaders' meetings.

During the meeting, the Council also removed, without discussion, Aruba, Barbados and Bermuda from the EU list, reducing the total number of jurisdictions listed to 12. Barbados and Bermuda were moved from annex I of the Council's original conclusions to annex II, which contains jurisdictions that have undertaken sufficient commitments to reform their tax policies, while Aruba was removed entirely from both annexes.

Building a better working world

Detailed discussion

Digital taxation

On 21 March 2018, the European Commission issued proposals for two Directives regarding new ways to tax digitalized forms of business activity.[2] The Commission's 2018 proposals focus on a two-phased approach: an interim solution, referred to as the digital services tax (DST), and a longer-term *Council Directive laying down rules relating to the corporate taxation of a significant digital presence* (SDP).

The DST proposal is for a tax on gross revenues (i.e., turnover), set at a uniform rate of 3% across all EU Member States. The DST is intended to be an interim solution, aimed at addressing what the Commission views as the most urgent gaps in the taxation of digital activities, while ensuring what the Commission describes as a level playing field for all businesses.

On 12 March 2019, following a discussion at the ECOFIN meeting of 4 December 2018,[3] the Council reviewed the progress achieved in the negotiations on the DST, focusing on a new compromise text that would limit the DST's scope to only digital advertising services.[4] The March 2019 discussion revealed that despite broad support from many Member States, some delegations maintained reservations, reflecting either objections to some specific aspects of the proposal or more fundamental objections. It was agreed that the Presidency of the Council would conduct work on the EU position in international discussions on digital taxation, in view of the OECD's report on the issue which is expected in 2020.[5]

The Council again discussed this issue at the meeting on 17 May 2019. It was agreed that the Presidency of the Council would present the views expressed by ministers during preparations for the G20 Finance Ministers' meeting on 8-9 June in Fukuoka, Japan. In addition, the ECOFIN Chair intends to present the outcome of ECOFIN discussions at the G20 Leaders' Summit later in June.

During the May 2019 meeting, the Council discussed ways to prepare for the debate at the international level on comprehensive solutions to address the challenges of taxation in the digitalized economy and broader issues related to the allocation of taxing rights and tax competition. The Council also discussed how they would work together on the assessment of the impact of the various options being considered in the OECD.

The Council also clarified that if, by the end of 2020, it appears that any agreement at the OECD level is expected to take additional time, the Council could, if necessary, revert to discussing a possible EU approach on this topic. In addition, the Presidency of the Council also confirmed in the meeting that the 2018 EU proposal for a Directive on corporate taxation based on SDP remains available for future follow-up.

Listing of non-cooperative jurisdictions for tax purposes

On 5 December 2017, the Council published a list of "Non-cooperative jurisdictions for tax purposes." This initial list was comprised of 17 jurisdictions that were deemed to have failed to meet relevant criteria established by the European Commission.[6]

There have been a number of changes to the list since its initial release. In this regard, the Council agreed that a de-listing would be justified based on an expert assessment of the commitments made by the listed jurisdictions to address deficiencies identified by the EU. During the course of 2018, many of the jurisdictions included in the initial list engaged in what the Council describes as a constructive dialogue with the EU and made commitments to comply with the EU's criteria. By the end of 2018, only five jurisdictions remained listed: American Samoa, Guam, Samoa, Trinidad and Tobago and the US Virgin Islands.

On 12 March 2019, the Council adopted a revised EU List, adding 10 new jurisdictions that either did not commit to address EU concerns or did not deliver their commitments on time.[7] In addition to the five jurisdictions that were already listed, the revised EU List included the following jurisdictions: Aruba, Barbados, Belize, Bermuda, Dominica, Fiji, Marshall Islands, Oman, United Arab Emirates, and Vanuatu.

On 17 May 2019, the Council decided to remove Aruba, Barbados and Bermuda from the EU list, bringing the total number of jurisdictions listed down to 12.[8] Barbados has committed at the political level to amend or abolish the measure of similar effect that replaced its harmful preferential regimes, while Aruba and Bermuda have now implemented their commitments. Bermuda also remains committed to addressing EU concerns in the area of collective investment funds. As a consequence, Barbados and Bermuda will be moved from annex I of the Council's conclusions to annex II, which includes jurisdictions that have undertaken sufficient commitments to reform their tax policies, while Aruba will be removed entirely from both annexes.

The first countermeasures against listed non-cooperative tax jurisdictions were reflected in a Communication that was released and adopted by the European Commission in March 2018.[9] This Communication set out new requirements against tax avoidance in EU legislation governing in particular financing and investment operations.[10] The adopted Communication is intended to ensure that EU external development and investment funds cannot be channeled or transited through entities in countries that are included on the EU list.

Excise duty

During the May 2019 meeting, the Council also discussed measures to improve the business environment for goods subject to excise duty by ensuring fair competition and reducing the administrative burden on companies. More specifically, the Council exchanged views on the following three proposals: (1) a directive on the structures of excise duty on alcohol and alcoholic beverages, (2) a directive on general arrangements for excise duty, and (3) regulation of administrative cooperation on the content of electronic registers.

According to the Council outcomes document, ministers achieved significant progress in the negotiations regarding these directives, but did not reach a final agreement on the package of measures. It was agreed that the Council will continue to work at a technical level with a view to reaching a compromise acceptable for all Member States as soon as possible.

Implications

As noted, the Council has decided that the most beneficial way forward on digital taxation in the immediate term is to provide EU-wide input into the OECD's ongoing project on the tax challenges of digitalization. No details have yet been released on the position that the Presidency of the Council intends to bring forward at the G20 Finance Ministers' meeting in Fukuoka on 8-9 June 2019. Businesses should therefore continue to closely monitor this area, in particular paying attention to any EU documents submitted to the G20 in advance of either the G20 Finance Ministers' meeting or the G20 Leaders' Summit on 28-29 June 2019.

As noted in previous EY Global Tax Alerts, the OECD proposals would have implications for a wide range of businesses with cross-border activity, whether they use digitalized business models or more traditional models.

In addition, the work on the EU list of non-cooperative jurisdictions is a dynamic process. The Council will continue to regularly review and update the list, taking into consideration the evolving deadlines for jurisdictions to deliver on their commitments and the evolution of the criteria that the EU uses to establish the list. Companies with activities in listed jurisdictions should understand the implications of a jurisdiction being listed, as well as monitoring ongoing developments closely.

Endnotes

1. https://www.consilium.europa.eu/en/meetings/ecofin/2019/05/17/.
2. See EY Global Tax Alert, *European Commission issues proposals for taxation of digitalized activity*, dated 21 March 2018.
3. See EY Global Tax Alert, *ECOFIN agrees to extend discussions on Digital Services Tax, taking into account a new proposal from France and Germany*, dated 4 December 2018.
4. See EY Global Tax Alert, *ECOFIN publishes updated list of non-cooperative jurisdictions for tax purposes, fails to gain agreement on digital services tax*, dated 14 March 2019.
5. See EY Global Tax Alert, *OECD opens public consultation on addressing tax challenges arising from digitalization of the economy: time-sensitive issue impacting all multinational enterprises*, dated 14 February 2019.
6. See EY Global Tax Alert, *Council of the European Union publishes list of uncooperative jurisdictions for tax purposes*, dated 6 December 2017.
7. See EY Global Tax Alert, *ECOFIN publishes updated list of non-cooperative jurisdictions for tax purposes, fails to gain agreement on digital services tax*, dated 14 March 2019.
8. American Samoa, Belize, Dominica, Fiji, Guam, Marshall Islands, Oman, Samoa, Trinidad and Tobago, United Arab Emirates, US Virgin Islands and Vanuatu.
9. https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/.
10. See EY Global Tax Alert, *European Commission adopts first counter-measures on listed non-cooperative tax jurisdictions*, dated 22 March 2018.

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

Ernst & Young GmbH Wirtschaftsprüfungsgesellschaft, Munich
- Klaus von Brocke klaus.von.brocke@de.ey.com

Ernst & Young Belastingadviseurs LLP, Amsterdam
- David Corredor-Velásquez david.corredor.velasquez@nl.ey.com
- Konstantina Tsilimigka konstantina.tsilimigka@nl.ey.com

Ernst & Young LLP (United States), Global Tax Desk Network, New York
- Jose A. (Jano) Bustos joseantonio.bustos@ey.com
- Jean-Charles van Heurck jean-charles.van.heurck1@ey.com

Ernst & Young LLP (United States), Washington, DC
- Barbara M. Angus barbara.angus@ey.com
- Rob Thomas rob.l.thomas1@ey.com

EY | Assurance | Tax | Transactions | Advisory

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

EYG no. 002465-19Gbl

1508-1600216 NY
ED None

ey.com