Briefing

International review for November

Speed read

As we edge closer to the end of 2024, attention turns to the future of tax policy under the 47th President of the United States, Donald Trump. In Europe, the new European Commission is starting to communicate its own tax policy agenda for the next Parliament. The CJEU has rendered its decision in Case C-782/22 which may have implications for UK insurance companies and pension funds. The European Commission has adopted DAC 9 to establish a framework for the exchange of Pillar Two information between member states. In France Finance Bill 2025 has proposed €20bn in additional taxes, including a temporary corporate income tax surcharge. Finally, the OECD Secretary General has provided an update on the status of Pillars One and Two.

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US tax policy in 2025

Following November's US election Donald Trump will be inaugurated as the 47th President of the United States on 20 January 2025. In a clean sweep of the 'trifecta' the Republicans also now have control of the House of Representatives and the Senate, giving the new President broad scope to push his legislative agenda through Congress.

President-elect Trump did not present a formal tax plan during his campaign, but readers can refer to my September article for a reminder of his recent statements on tax. Key amongst these is making permanent the $4 trillion of tax cuts in the Tax Cuts and Jobs Act (TCJA) 2017 that are due to expire at the end of 2025. This policy may, in part, be paid for by a broad range of tariffs on goods imported to the US.

Major US tax legislation in 2025 is likely to be introduced by way of special 'budget reconciliation' procedures that allow tax legislation to be passed with only a simple majority vote in the Senate without being subject to a filibuster. Using the reconciliation process would allow Republicans to pass tax legislation with little or no support from the Democrats in the Senate. The procedure of Budget reconciliation has been routinely used by both parties to enact tax legislation when one party is in control of Congress and the White House. Recent examples include the TCJA 2017 and the Inflation Reduction Act of 2022.

Tax policy under the new European Commission

Following the European Parliamentary elections in June 2024, European Commission President Ursula von der Leyen's new intake of Commissioners-designate have been responding to written questions from the European Parliament in advance of public parliamentary hearings. After the hearings have finished in mid-November, the Parliament will vote to approve or reject the Commission as a whole during a plenary session. The European Council, acting by qualified majority, then formally appoints the Commission's new leadership.

In a significant change to previous mandates, in the new Commission Taxation matters will no longer be part of the economy portfolio, but will fall within the remit of the Commissioner for Climate, Net-Zero and Clean Growth, Wopke Hoekstra. Hoekstra's written answers to Parliament give an insight into the direction of travel of EU tax policy.

Hoekstra said he will work towards EU tax initiatives playing a crucial role in supporting Europe's competitiveness, prosperity and social fairness while continuing to fight against tax fraud, tax evasion and tax avoidance. He also said he will evaluate the existing EU direct taxation rules, to identify inconsistencies, contradictions and rules that may be out of date, and to test the effectiveness, efficiency, relevance, coherence and added value of the existing direct tax Directives. In this context, he referenced to the Commission's launch of the evaluation of the Anti-Tax Avoidance Directive (ATAD) and of the Directive on Administrative Cooperation (DAC).

The Commissioner-designate also acknowledged the challenge of achieving unanimity in the Council for pending direct tax proposals. Hoekstra will examine Member States' willingness to reconsider the proposal for a Debt-Equity Bias Reduction Allowance (DEBRA) in light of the Commission's competitiveness mandate and the ambition to develop a Savings and Investment Union.

In respect of the Business in Europe: Framework for Income taxation (BEFIT) proposal, Hoekstra considers this a long-term project, which has been a key objective for many years and will continue to be a priority. He also notes that the Commission will continue its wider efforts to address aggressive tax planning, for example through the Unshell Directive.

CJEU decision in Dutch net taxation case

On 7 November 2024, the CJEU rendered its decision in Dutch net taxation case, *XX v Inspecteur van de Belastingdienst* (Case C-782/22). This judgment is not only relevant for insurance companies with unit linked service offerings, but potentially also for other non-resident (life) insurance companies and pension funds deriving dividend income from another member state.

The case concerns a UK-based life insurance company that received Dutch dividend income as part of unit linked products that were offered to UK pension schemes. These dividends were subject to 15% Dutch withholding tax, which was a final tax for non-residents. For Dutch entities operating a comparable business model as the plaintiff, the effective tax burden on such dividends is zero. This is due to an offset against the dividend income equal to the corresponding increase of the provision for obligations to policy holder. This reduces the Dutch corporate tax base to zero, resulting in a full refund of the dividend withholding tax.

Central to the court's decision was how its judgment in Case C-17/14 of 2015 should be interpreted. In that case, the CJEU ruled that the taxpayer was only entitled to deduct costs that related to the collection of the dividends, but not to other directly related expenses. In Case C-782/22, the Dutch tax authorities interpreted this to mean the UK company was not entitled to 'net off' amounts representing the increases of the provision for obligations to the policy holders against the corresponding dividend income received.

The CJEU has ruled that the different treatment in the Netherlands of resident and non-resident companies constitutes an unjustified restriction of the EU free movement of capital if there is a direct link between the dividends received, on the one hand, and the increase in the obligations to unit linked policy holders, on the other. The question whether such direct link exists must be answered by the national court.

The CJEU's decision is a welcome clarification of the narrow application of its previous decision in Case C-17/14. The referring Dutch court observed that, although the company is not a pension fund, its business model and the resulting implications with respect to its financial obligation towards its clients are equivalent. It also noted a direct causal link between investment results and changes in the company's liabilities. It may be inferred from these assessments that, in light of the CJEU's decision, it is likely the referring court will confirm the unjustified difference in treatment.

EU adopts DAC 9 to establish exchange of information under the EU Minimum Tax Directive

On 28 October 2024, the EC adopted its latest Directive on Administrative Cooperation (DAC 9), to establish a framework for the exchange of Pillar Two information between member states. Key takeaways from DAC 9 are:

- Reporting template: The DAC 9 proposal introduces a standard template for the Top-up Tax Information Return (TTIR), which closely follows the template developed by the OECD for the GloBE Information Return (GIR) published in July 2023. The proposal notes that future changes to the GIR would be reflected in the TTIR via Commission delegated acts.
- One stop shop approach: The proposal provides the option of central filing of the TTIR in the EU, where the EU Ultimate Parent Entity or designated filing entity files on behalf of the group in an EU Member State. However, each constituent entity in the Member State, or a designated local entity on its behalf, is still required to notify its tax administration of the identity of the entity that is filing the TTIR, as well as the jurisdiction in which it is located.
- Exchange of information: The framework includes provisions for the exchange of Top-up tax information between Member States. For the exchange of information with third countries, Member States will have to sign appropriate international agreements with relevant jurisdictions.
- Dissemination approach: The proposal includes a dissemination approach for the exchange of information to ensure that Member States only receive the information they need based on their role in the MNE group. This follows the approach that was published by the OECD in July 2023.
- Timing of information exchange: The relevant sections of the TTIR should be exchanged with the appropriate Member States as soon as possible, and no later than three months after the reporting fiscal year's filing deadline. However, for the first reporting year an extended deadline of six months from the filing date will apply.

The Directive requires unanimous approval in the Council. Once adopted, EU Member States would be required to transpose the Directive into domestic legislation by 31 December 2025.

French Finance Bill 2025

On 10 October 2024, the French Government published Finance Bill 2025. In order to meet the new government's objective to reduce France's public deficit to 5% of GDP by 2025, nearly €20bn of additional taxes have been proposed, split between businesses (€13.7bn) and individuals (€5.7bn).

Key amongst the measures impacting business is the introduction of a temporary corporate income tax surcharge on large companies with turnover equal to or greater than €1bn in 2024 and 2025. The exceptional contribution would be assessed on a company's corporate income tax before deducting any tax reductions, credits and receivables. The exact rate payable varies from 10.3% to 41.2%, with higher rates payable in 2024 and also as a company's turnover reaches €3bn. The measure is expected to impact more than 350 companies in France.

Following the lead of the US, France has also implemented a share buyback tax. The tax is applicable to capital reductions following share buy-backs carried out from 10 October 2024 onwards by companies with consolidated turnover greater than €1bn in the previous financial year. The tax rate, set at 8% (notably higher than the US 1% share buy-back tax), would be based on the amount of the capital reduction and a portion of capital premiums (i.e. issuance or merger premiums).

The abolition of the contribution on companies added value (CVAE – due by companies with turnover equal to or greater than €500,000 engaged in activity taxable under the business property tax regime) will be deferred until 2030. The rate will remain at 0.094% until 2028, when it will gradually reduce to 0% by 2030.

BEPS 2.0 state of play

Finally, this month the OECD Secretary-General published its tax report to the G20 Finance Ministers and Central Bank Governors, including an update on BEPS 2.0.

On Pillar One the report notes that members of the Inclusive Framework (IF) have secured near full consensus on the Multilateral Convention to implement Amount A (MLC). The focus of the remaining work on Pillar One is reaching political consensus on an Amount B framework that goes beyond the elective approach and is linked with Amount A. Negotiations are ongoing in this respect.

In respect of Pillar Two, the report states that approximately 45 jurisdictions have issued final or draft legislation to implement the global minimum tax with effect from 2024 or 2025. Based on the countries already implementing the minimum tax, the OECD estimates that approximately 60% of MNEs in scope of the GloBE rules will be subject to the minimum tax regime in 2024 with the number going up to 90% in 2025. The report explains that the focus of the IF is now on ensuring consistency and certainty and to address concerns regarding compliance costs. Work therefore continues on establishing a full-fledged peer review process for confirming the qualified status of implementing jurisdiction's legislation, issuing additional Administrative Guidance, developing information collection and exchange mechanisms as well as dispute resolution mechanisms. ■

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