Irish Tax Institute

A Guide to Global Tax Reform

12 months on

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April 2017

COMPARATIVE TAX POLICY AND ADMINISTRATION

COMPARATIVE TAX POLICY AND ADMINISTRATION

August 21 – September 1, 2017 ***Faculty Chair: Jay Rosengard***

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ABOUT JAY ROSENGARD

Jay Rosengard, Adjunct Lecturer in Public Policy, has 40 years of international experience designing, implementing and evaluating development policies in public finance and fiscal strategy, tax and budget reform, and intergovernmental fiscal relations. He is also the Director of the Mossavar-Rahmani Center for Business and Government's Financial Sector Program at Harvard Kennedy School.

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CHAPTER 1

Introduction

It is now 12 months since the Irish Tax Institute, in conjuction with Harvard's Ash Center for Democratic Governance and Innovation, hosted its second Global Tax Conference.

The 2016 conference came at a critical juncture for global tax policy following the release of the OECD's final BEPS reports and the European Commission's Anti-Tax Avoidance Package. The conference also took place against the backdrop of political uncertainty, with the UK referendum on EU membership and the US presidential election looming.

International tax reform has continued apace in the intervening period and we have seen a number of significant proposals emerge from both the European Commission and the OECD, many of which were discussed at the conference. Both bodies are also placing increased focus on the tax growth and certainty agenda. More developing countries are beginning to engage in the tax reform process and international bodies have developed toolkits to assist these countries in important areas of international tax such as transfer pricing. In addition, recent political developments in the US and the UK will no doubt have a direct impact on the global tax landscape.

This update provides a snapshot of the key tax developments over the past 12 months.

EU Tax Agenda

- Anti-Tax Avoidance Directive
- CCCTB
- State Aid investigations
- Public Country-by-Country Reporting
- Dispute Resolution Framework

OECD

- BEPS implementation
- Multilateral Instrument
- Business certainty questionnaire
- Toolkits for developing countries

US Tax Reform

- Rate reduction
- Territorial system
- Consumption based regime
- Border adjustment

Brexit Implications

- Customs
- VAT
- Corporation Tax
- Withholding Tax

CHAPTER 2

EU Tax Reform

Proposals on Public Country-by-Country Reporting released

Following a lengthy impact assessment, the European Commission released proposals on Public Country-by-Country Reporting in April 2016. Under the proposals, all multinationals that have undertakings in the EU and a global annual turnover exceeding €750 million, would be required to publicly disclose the following categories of information:

- The nature of the group´s activities
- The number of employees
- The total net turnover, which includes the turnover with third parties as well as between companies within a group
- The profit made before tax
- The amount of income tax accrued
- The amount of tax actually paid during that year, and
- The accumulated earnings

After some debate within the EU, it appears that this proposal will progress as an Accounting Directive not a Tax Directive, meaning that it will be subject to qualified majority voting by Member States rather than unanimity. A number of countries have already challenged the proposals:

- Both the Irish and Swedish Parliaments issued Reasoned Opinions which concluded that the proposals breach the principle of subsidiarity.
- The French Constitutional Council concluded that the proposals were unconstitutional.

Agreement on two Anti-Tax Avoidance Directives

In July last, EU Member States reached agreement on the final text of an Anti-Tax Avoidance Directive ("ATAD"), one of the key components of the European Commission's Anti-Tax Avoidance Package.

The Directive contains five specific measures relating to:

Deductibility of Interest	Controlled Foreign Company (CFC) Rules	Hybrid Mismatches	General Anti-Abuse Rule	Exit Taxes

In February 2017, Member States agreed to additional rules on hybrid mismatches involving third countries, referred to as ATAD 2.

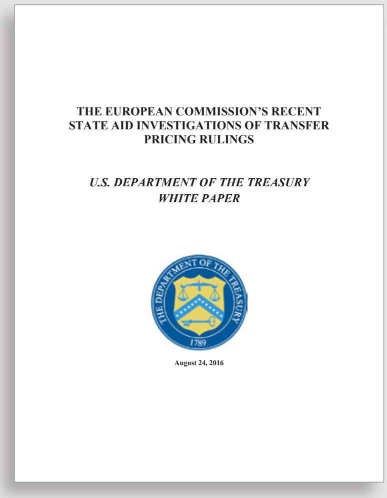
Most of these measures must be transposed into domestic legislation by the end of 2018, with the new hybrid rules expected to come into force by 2020. Member States may defer on the adoption of certain measures:

- The introduction of the exit tax rules can be deferred until 2020.
- The new hybrid provisions must be brought into effect from 1 January 2020 but Member States may opt to defer the application of the specific reverse hybrid entity rule until 1 January 2022.
- Member States that already have targeted interest deductibility rules which are "equally effective" to the interest limitation rule set out in the ATAD may continue to use these rules until the OECD introduces BEPS Action 4 as a minimum standard, but at the latest until 1 January 2024.

State Aid investigations

Since the Commission began its work on this initiative in 2013, it has opened formal enquiries into certain tax rulings granted by Belgium, Ireland, Luxembourg and the Netherlands. There have been several significant developments on this front since our conference last year;

- **August 2016:** The US Department of the Treasury released a White Paper outlining its concerns with the current EU State Aid investigations.


THE EUROPEAN COMMISSION'S RECENT STATE AID INVESTIGATIONS OF TRANSFER PRICING RULINGS

U.S. DEPARTMENT OF THE TREASURY WHITE PAPER

August 24, 2016

The European Commission's Recent State Aid Investigations of Transfer Pricing Rulings

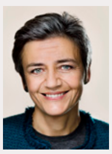
US Department Of The Treasury White Paper

http://bit.ly/2bQdFVn

"The Commission's actions undermine the international consensus on transfer pricing standards, call into question the ability of Member States to honour their bilateral tax treaties, and undermine the progress made under the OECD/G20 Base Erosion and Profit Shifting ("BEPS") project".

US Department of the Treasury White Paper

- **August 2016:** The Commission held that two tax opinions granted by Ireland to Apple breached state aid rules and Ireland was instructed to recover the unpaid taxes from Apple for the years 2003 to 2014, which the Commission estimated to be up to €13bn. Once collected, the sum may be placed in an escrow account until legal proceedings have concluded. Both the Irish Government and Apple have appealed the decision.



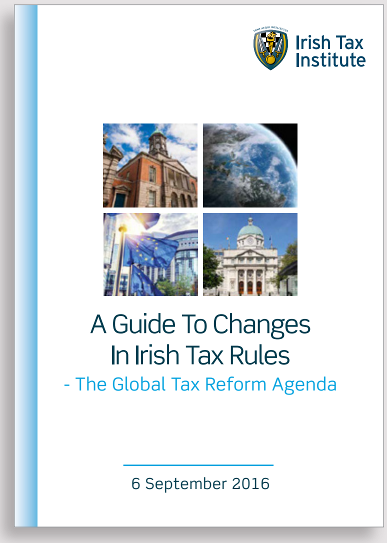
"The Commission's investigation concluded that Ireland granted illegal tax benefits to Apple, which enabled it to pay substantially less tax than other businesses over many years"

European Commissioner for Competition, Margrethe Vestager, 30 August 2016

"I disagree profoundly with the Commission's decision. Our tax system is founded on the strict application of the law, as enacted by the Oireachtas, without exception"

Minister for Finance, Michael Noonan T.D., 30 August 2016

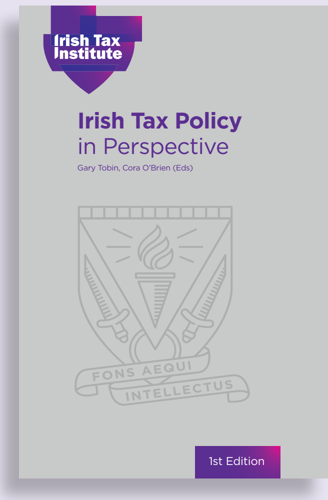
- **September 2016:** The Commission opened an investigation into Luxembourg's tax treatment of the GDF Suez group (now Engie).



In advance of a Parliamentary debate in Ireland on the EU State Aid ruling, the Institute published "A Guide To Changes In Irish Tax Rules - The Global Tax Reform Agenda".

The Guide looks at the work that Ireland has done, and continues to do, in the area of global tax reform.

http://bit.ly/2oZgQRm



In the past 12 months, the Institute published Irish Tax Policy in Perspective.

The book deals with a range of policy issues, including important contributions on the application of EU law and OECD principles in Ireland.

Order print or eBook edition - http://bit.ly/2ooLaU1

CCCTB proposals released

The European Commission published its long-awaited proposals on the relaunched Common Consolidated Corporate Tax Base (CCCTB) initiative in October 2016. There are a number of similarities to the Commission's original 2011 CCCTB proposal but the new proposals also contain some additional features:

- The Commission has released two separate proposals this time, one on the common base and the other on the consolidated base. The Commission will first seek agreement from Member States on the various elements of the common base before proceeding with discussions on the consolidated base proposals;
- The original initiative was proposed as a simplification measure which would cut compliance costs for businesses, while the 2016 proposals are presented as a measure to tackle aggressive tax planning;
- They will apply to EU profits of multinational companies on a mandatory basis where they earn global consolidated revenues of more than €750m. The original 2011 proposals were optional;
- They will include a "super-deduction" of between 25% - 50% for R&D expenditure;
- A new 'Allowance for Growth and Investment' will grant deductions for companies who finance their activities through equity investment.

In line with the 2011 proposal, consolidated group profit, calculated using a common set of rules (the common base), will be allocated by way of a formula based on three equally-weighted factors - assets, labour, and sales. Intangible assets have been specifically excluded from the formula.

The proposals have been the subject of much debate across the EU. Parliaments from six Member States – Denmark, Ireland, Luxembourg, Malta, Netherlands and Sweden have issued Reasoned Opinions to the Commission challenging the proposals.

These proposals must be agreed unanimously by all Member States in order to become law. Where there is no unanimity but the proposals are supported by at least nine Member States, the initiative could still be progressed under the Enhanced Cooperation procedure.

"The new CCCTB will be good for fairness because it is designed to be mandatory for the largest multinationals, which was not the case with the previous proposal. They will all be subject to the same corporate tax rules, which is the best way to block tax avoidance and deliver fair taxation. Other companies will be able to opt in if they wish, and I expect that many will, given the proposal's benefits. The rate that will apply to the companies subject to the CCCTB will remain a national priority."

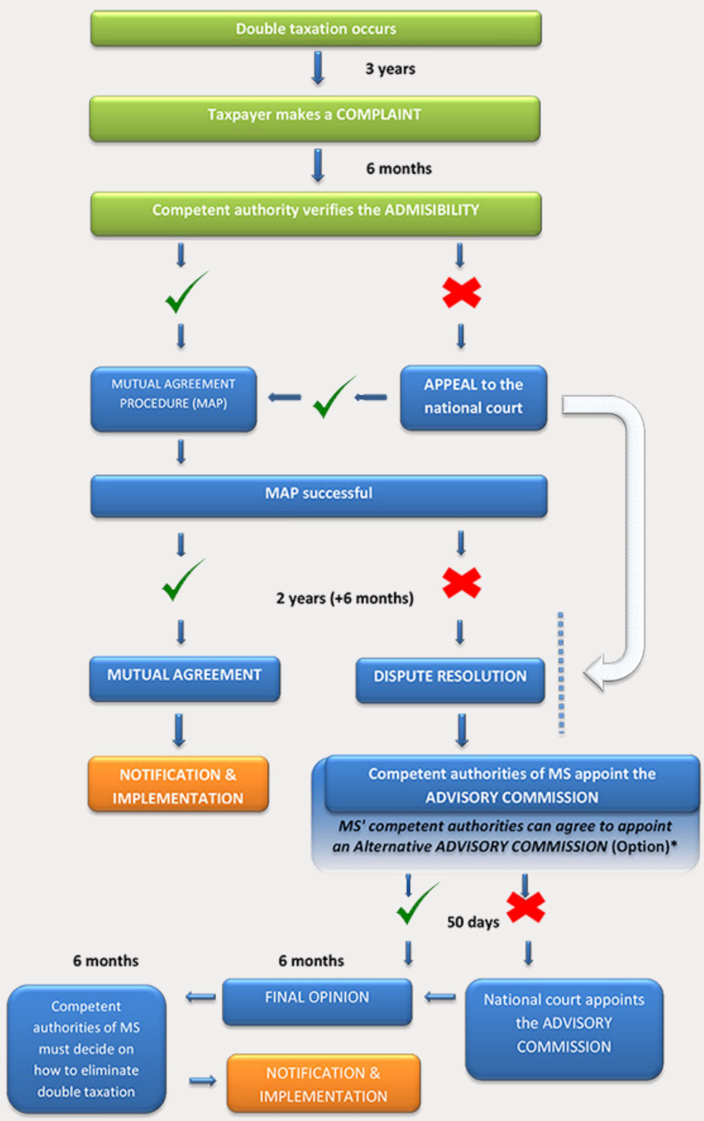
Pierre Moscovici
Commissioner, Economic and Financial Affairs, Taxation and Customs

Dispute Resolution Framework

Addressing one of the key objectives in its Action Plan for a Fair and Efficient Corporate Tax System, the Commission has published a new proposal to improve the double tax dispute resolution framework in the Single Market in October 2016.

The proposal represents an enhancement to the EU's current dispute resolution mechanism, the Arbitration Convention. The key features of the new framework are as follows:

- The mechanism will apply to all cross-border tax disputes relating to corporate tax matters;
- In Mutual Agreement Procedure ("MAP") cases, Member States must seek to resolve double tax disputes within a period of two years;
- If the MAP fails, this will automatically lead to an arbitration procedure involving an "Advisory Commission" (made up of independent arbitrators and representatives from the Member States involved).



** the Alternative Advisory Commission can differ in form, composition but also regarding the dispute resolution technique or process (mediation, conciliation ...).*

Read Cora O'Brien's blog on the new tax dispute resolution framework: http://bit.ly/2ptbGMW

Cora O'Brien'
Tax Policy Director at Irish Tax Institute

CHAPTER 3

OECD Tax Reform

BEPS implementation

BEPS implementation continues apace and Governments globally are in the process of adopting the BEPS measures into their own national law. A selection of these actions below demonstrates the breadth of change that is taking place:

Australia: Country-by-Country Reporting and master file and local file reporting provisions have been introduced.

Brazil: A consultation was recently held on dispute resolution in relation to tax treaties.

China: A number of commitments have been made to improve the dispute resolution process, including joining the Forum on Tax Administration's ("FTA") MAP forum.

Ireland: An independent review of Ireland's corporation tax code has been commissioned, which includes consideration of its approach to implementing the remaining BEPS recommendations.

Netherlands: The Dutch innovation box has been redesigned to align with the OECD's modified nexus approach.

United Kingdom: New rules in relation to interest deductibility and hybrid mismatches will come into force in April 2017.

United States: After a period of consultation, final regulations have been released in relation to Country-by-Country Reporting.

Agreement reached on Multilateral Instrument

Following 12 month's negotiation involving more than 100 countries, agreement has been reached on the text of the OECD's Multilateral Instrument ("MLI"). The MLI will transpose the BEPS treaty-related recommendations into over 2,000 tax treaties worldwide.

The MLI will give effect to both minimum standards and best practices arising from the BEPS Actions, although countries will be given flexibility to opt out of certain provisions through a "reservation" mechanism.

The MLI has been open for signature since 31 December 2016, with the first high-level signing ceremony scheduled to take place in June 2017.

Angel Gurría, OECD Secretary-General and Mike Williams, Director of Business and International Tax at HM Treasury, United Kingdom with the Multilateral Instrument.

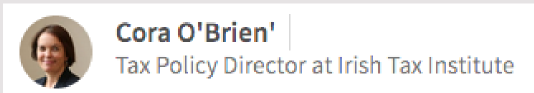
Tax Policy and the Growth Agenda

Both the European Commission and the OECD acknowledge that attention must be given to the role of tax policy in encouraging growth globally.

In November, the European Commission and the International Monetary Fund held a Conference in Brussels entitled "Taxation, investment and innovation: a triptych for balanced growth". The conference highlighted the important role tax policy has on entrepreneurship and how the right measures can empower citizens to set up and run an innovative business.

Read Olivia Buckley's blog on the conference: http://bit.ly/2p7Z7at

Read Cora O'Brien's blog on Entrepreneurship & Innovation: http://bit.ly/2pxLpwL



OECD seeks feedback from businesses on tax certainty

The OECD has been mandated by the G20 to develop solutions to support certainty in the tax system with the aim to promote investment, trade and balanced growth. As part of this initiative, the OECD launched a business survey which invited feedback from stakeholders on a range of issues such as:

- The specific tax factors which affect the investment and location decisions of businesses
- The ways in which tax uncertainty impacts business operations
- The factors giving rise to tax uncertainty


TAX CERTAINTY
IMF/OECD Report for the G20 Finance Ministers
March 2017
OECD

In March 2017, the OECD and IMF published a report which explores the nature of tax uncertainty, its main sources and effects on business decisions.

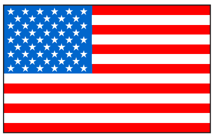
The report also outlines possible solutions to help governments shape a more certain tax environment.

PDF

http://bit.ly/2nymI5o

CHAPTER 4

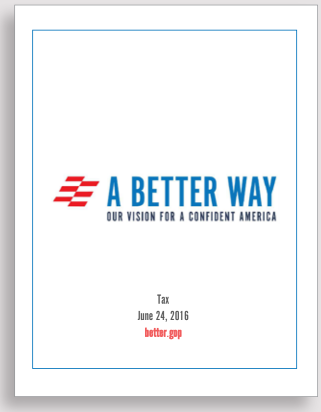
US Tax Reform



Tax Reform Blueprint published

The Tax Reform Task Force, led by House Ways and Means Committee Chairman Kevin Brady (R- TX), published the Tax Reform Task Force Blueprint in June 2016. The Blueprint proposes a complete overhaul of the current US corporate tax regime which would include:

- a reduction in tax rates for businesses;
- replacing the current worldwide system with a territorial regime;
- a move to a destination-based cash flow tax; and
- the introduction of a border adjustment tax.


A BETTER WAY
OUR VISION FOR A CONFIDENT AMERICA
Tax
June 24, 2016
better.gop

"A Better Way - Our Vision for a Confident America"

http://bit.ly/28VOwvf

Donald Trump elected President of the United States

Donald Trump was elected President of the United States in November 2016. Comprehensive tax reform was a clear priority throughout the election campaign and President Trump has already signalled his intent to proceed with his plans.

There are some differences between the Blueprint and President Trump's proposals and discussions are ongoing to develop a combined reform plan. The reform plan faces many hurdles, particularly the border adjustment element. Importers have raised concerns on the proposal, whilst others have suggested that any benefits for exporters could be offset by appreciation of the dollar.

"We are committed to tax reforms... We want to get this done by the August recess."

"We've been working closely with the leadership in the House and the Senate and we're looking at a combined plan."

US Treasury Secretary Steven Mnuchin, 23 February 2017

US renegotiating Double Tax Treaties

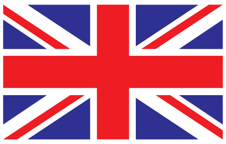
In February 2016, the US Department of the Treasury issued the new US Model Tax Convention. Treasury have since sought to renegotiate a number of the US Double Tax Treaties with the Model Convention being used as a basis for discussions.

The US has recently finalised a new treaty with Norway, while negotiations are ongoing with Ireland and Luxembourg.

> *"The 2016 Model also includes a number of new provisions intended to more effectively implement the Treasury Department's longstanding policy that tax treaties should eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance."*
>
> **US Department of the Treasury**

CHAPTER 5

Brexit



UK electorate vote to leave the EU

Following the results of the referendum, there has been continued speculation on the specific terms of the UK's departure from the EU. UK Prime Minister Theresa May has called a General Election for 8 June 2017 to provide political stability in advance of Brexit negotiations.

At this stage, it remains unclear what an exit will look like, in particular whether the UK will maintain access to the Single Market which is key in terms of its trading relationship with other Member States. From a tax perspective, Brexit could have widespread implications for companies:

Issue	Implications
Customs Duties	EU customs legislation may no longer apply to the UK, resulting in increased customs duties.
VAT	As EU VAT Directives may not be applicable in the UK, this may result in a complete change to the UK VAT system. For example, supplies of goods and services could be treated as imports / exports for VAT purposes.
Corporation Tax	UK companies may not be subject to direct tax initiatives within the EU such as the CCCTB.
Withholding Tax	EU Directives such as the Parent-Subsidiary Directive and the Interest and Royalties Directive will no longer apply, meaning that payments of dividends, interest and royalties could be subject to withholding tax.
State Aid	Tax incentives granted by the UK Government would no longer be subject to EU State Aid rules.

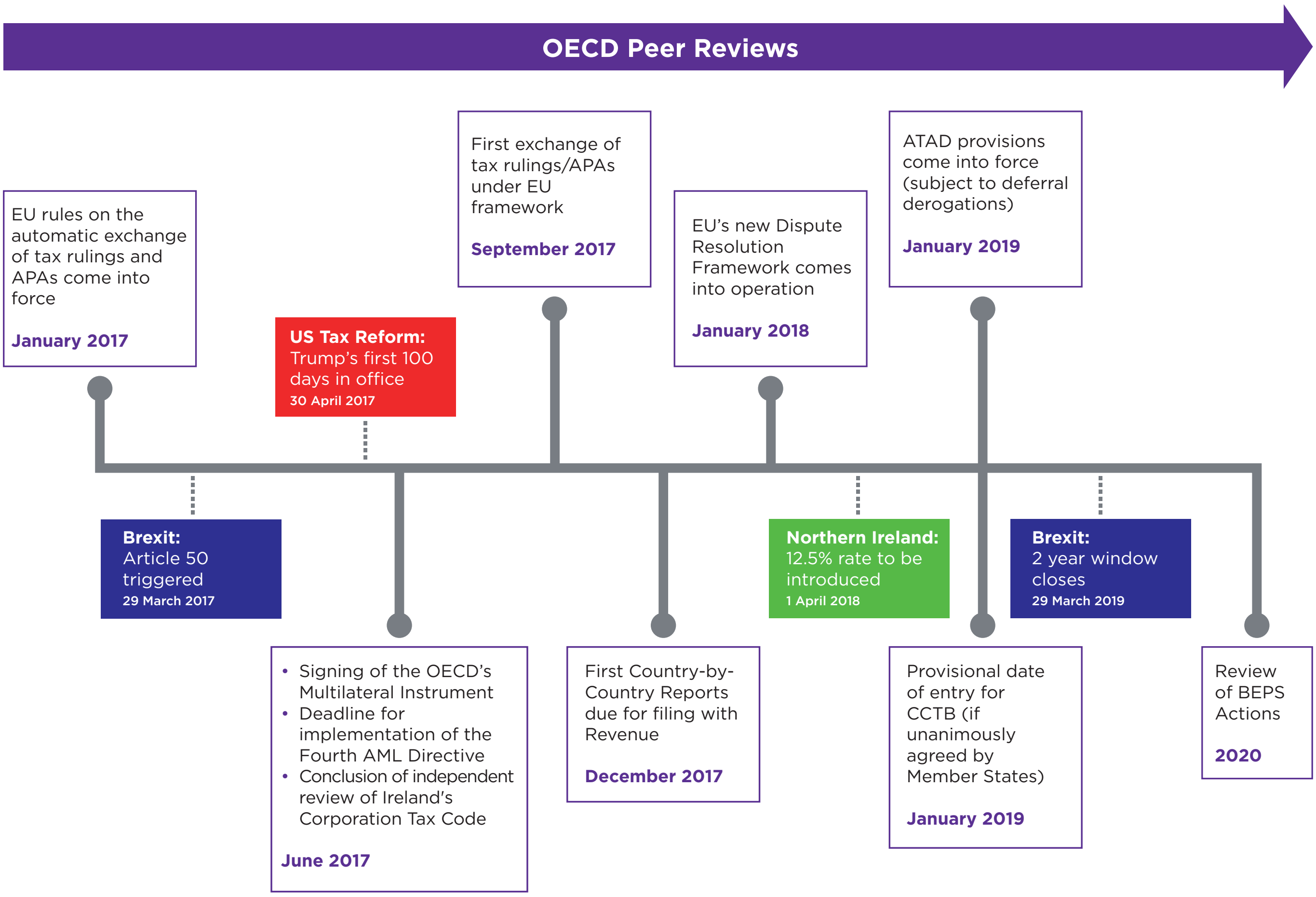
In light of Brexit, it has been suggested that the UK will look to strengthen its FDI offering through the adoption of more competitive corporate tax policies.

"We would have the freedom to set the competitive tax rates and embrace the policies that would attract the world's best companies and biggest investors to Britain"

UK Prime Minister Theresa May, 17 January 2017

CHAPTER 6

The tax reform journey to 2020



APPENDIX

Recap of the key discussion points from the Global Tax Conference

Pascal Saint-Amans
Director of the OECD Centre for Tax Policy and Administration

Bob Stack
(then) Deputy Assistant Secretary, International Tax Affairs, U.S. Department of the Treasury

Valère Moutarlier
Director in charge of Direct Taxation, DG Taxation and Customs Union, European Commission

The Irish Tax Institute's Global Tax Conference, hosted jointly with the Harvard's Ash Center for Democratic Governance and Innovation, took place in Dublin Castle on 10 & 11 March 2016. The conference was attended by 400 delegates who heard from key figures in the tax world including global policy-makers, tax administrations, tax practitioners and multinational companies.

Background to global tax reform

Delegates heard that global tax reform was being driven by tax competition and the mismatches in global tax systems. Bob Stack ((then) Deputy Assistant Secretary, International Tax Affairs, U.S. Department of the Treasury) identified two defining issues which global tax reform needs to address; the mobility of intellectual property and the mobility of capital. He said that the current tax rules are too vague, meaning that companies don't have certainty over what tax they need to pay.

We heard how the heightened public and media scrutiny of corporates' tax affairs was also driving the reform agenda. Ed Troup suggested that there has been a *"decline in public confidence"* in the tax system and he identified this as a key challenge as he embarked on his new role as HMRC's Executive Chair and Permanent Secretary.

BEPS

The OECD has been driving the tax reform agenda through its work on the BEPS project, with the final package of BEPS reports being issued in October 2015. Pascal Saint-Amans, (Director of the OECD Centre for Tax Policy and Administration) said that BEPS had *'over-achieved'* in the eyes of the OECD.

Mr. Saint-Amans said that we are moving into *"BEPS II"*. He spoke about the importance of establishing the BEPS Inclusive Framework to ensure the consistent implementation of the BEPS measures across the globe. He identified the conclusion of the Multilateral Instrument as a key priority for 2016.

EU tax reform agenda

Valère Moutarlier (Director in charge of Direct Taxation, DG Taxation and Customs Union, European Commission) said that the Anti-Tax Avoidance Package is at the heart of the Commission's agenda and he stressed its importance in delivering a coordinated implementation of BEPS measures in the EU. He also countered suggestions that the Commission had now gone beyond BEPS. However, others had concerns, with Simon Henry, Chief Financial Officer, Royal Dutch Shell, stating that the Commission's actions *"risk undermining the BEPS process"*.

On the EU's public Country-by-Country Reporting proposals, Mr. Moutarlier said that the Commission was looking to find a balance between public transparency and protecting the competitive interest of countries, remarking that they would *"not result in additional red tape for companies"*.

Mr. Moutarlier said that the Commission would release proposals on the Common Consolidated Corporate Tax Base ("CCCTB") in the second half of 2016, with consensus first being sought on the common base. He reaffirmed that the Commission had no agenda on the harmonisation of corporate tax rates.

US tax reform

Delegates were given an insight into the US tax system, most notably the impact of the worldwide system, non-permanent incentives and high corporate tax rates.

There were differing views on the likely timeline for reform although former Congressman and Chairman of the House Ways and Means Committee Dave Camp expected to see some developments in 2017. There was varied discussion on what US tax reform might look like, with panellists speculating on the introduction of measures such as a reduced corporate tax rate, a dividend payment deduction, and a minimum rate on foreign profits.

Bob Stack updated delegates on the implementation of BEPS in the US, noting that Country-by-Country Reporting should be introduced with effect from 30 June 2016. He cautioned that the US authorities would not exchange Country-by-Country Reports if they were misused or made public.

As readers will be aware, a number of US companies have been the subject of the European Commission's State Aid investigations. Ron Dickel, Vice President Global Tax and Trade, Intel Corp, affirmed that the Commission's action was creating uncertainty for US businesses.

The power of tax data

Tax transparency was discussed at various stages throughout the conference. While speakers were largely supportive of enhanced transparency, some concerns were raised about data confidentiality and the risk of misinterpretation. John Connors (Group Tax Director, Vodafone Group plc) said that all companies must be prepared to enter the court of public opinion on tax matters and he spoke about the value of tax strategy documents in dealing with media scrutiny.

It was clear from discussions that data analytics is now becoming a key element in the tax function and that the traditional skillset in tax departments will need to change to embrace this. Speakers also highlighted the importance of addressing these new skills requirements in tax education programmes for the profession globally.

Delegates heard that the introduction of FATCA and the Common Reporting Standard were "game changers" for the reporting of offshore information. Sean Foley (Leader of Global

Transfer Pricing Services, KPMG, US) stressed that Country-by-Country Reports should not be used by tax authorities as an *"audit adjustment"* tool.

What next for tax policy?

While the recent focus of global tax policy-makers has been on the prevention of BEPS activities, a number of panellists spoke about the need for tax policy to promote positive behaviour. Pascal Saint-Amans said that a key goal of the OECD was to explore how tax policies can *"contribute to growth, innovation, and certainty to increase investment"*.

There was wide-ranging discussion throughout the conference and delegates were also given insights into areas such as the fiscal mix, sub-national tax frameworks and tax infrastructures in developing economies. Overall, the conference gave delegates a deeper understanding of the current tax policy agenda and the challenges facing the wider tax community over the coming years.

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