# Accountancy Europe Tax Policy Update

28 November – 9 December

## Highlights

- **Commission launches VAT simplification package for e-commerce – 1 December**
- **ECOFIN Council discusses ATAD II, tax transparency, CCCTB, FTT – 6 December**
- **Several Member States want public CBCR to have tax as its legal basis – 6 December**
- **Eurodad report: "Europe's role in supporting an unjust global tax system 2016" – 7 December**
- **PANA Committee hearing with Commissioner Moscovici, tax advisors under close scrutiny – 7 December**

## European Commission

### Commission publishes Guidelines for a Model for a European Taxpayers' Code – 25 November

The European Commission has issued Guidelines for a **Model European Taxpayers' Code**. The Code provides a set of core principles that bring together existing rights and obligations governing the relationships between taxpayers and tax administrations in Europe. It was prepared on the basis of joint work conducted by EU Member States. The Code and its views are **non-binding**, and function as a generic model to which Member States may add elements to better adjust them to their national contexts.

### Major Win for the EU in the WTO Dispute on Boeing – 28 November

The European Commission has claimed a major victory for the EU in the **World Trade Organization (WTO)** dispute with the US company **Boeing**. The WTO ruling established that US support to Boeing in the form of **tax breaks** extended until 2040 is against international rules on trade. The European Commission had contested the US measure, claiming that it is discriminatory towards non-US businesses active in the same sector.

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## Commission launches public consultation on the functioning of mutual assistance between EU Member States for the recovery of taxes – 30 November

The European Commission has launched a public consultation to gather stakeholder feedback on the functioning of **mutual assistance** between Member States on cross-border **tax recovery**, as established in **Directive 2010/24**. The end-objective is to gather information on the need for further improvement of the legal, administrative or technical framework. The **deadline** for providing input to the consultation is **8 March 2017**. The Commission had, earlier in November, published a Roadmap providing additional background, details and possible future steps of this exercise.

## Commission launches VAT simplification package for e-commerce – 1 December

The European Commission has launched its long-anticipated **VAT simplification package** for e-commerce. The package proposes changes to the existing EU VAT legislation in order to:

- Further facilitate and simplify **cross-border trade**
- Provide equal VAT treatment for **online publications**
- Ensure a **level-playing-field** between businesses – the Commission maintains that currently EU businesses are at a clear disadvantage to non-EU businesses which can legitimately and through high levels of non-compliance make VAT-free supplies into the EU

The **main objective** of the proposals is to **modernise the EU VAT system** to the particularities of increasingly digitalised economies. In the Commission's words, the VAT rules that apply in Europe today were created before the boom of the internet and online sales.

The Commission also published a factsheet on the major changes that its proposals intend to introduce. As a whole, the package consists of:

- **Three amendments** to the **VAT Directive** (2006/112/EC), namely:
  - VAT rates applied to e-books, -newspapers and -periodicals – link
  - Pieces of evidence required for businesses with cross-border intra-Community sales of telecommunications, broadcasting and electronically supplied services – link
  - The main chunk – amendments with regard to VAT obligations for supplies of services and distance sales of goods, including an extension of the One Stop Shop (OSS) – link
- **One amendment** to the Regulation on administrative cooperation and combating **VAT fraud** (Regulation No 904/2010). The main purpose here is to provide for the IT tools and forms of administrative cooperation need ed to accommodate the extension of the OSS – link
  - The Directive covers the rules and procedures for electronic exchanges between taxable persons and their tax administrations, as well as between Member States' tax administrations of VAT information concerning VAT identification, VAT returns and VAT payments within the OSS

The main areas of reform are the following:

- **VAT treatment of e-publications:**
  - Member States will be allowed to apply the **same VAT rates** to e-publications as they currently apply to printed publications, including reduced, super-reduced and zero rates
- **VAT simplification for small businesses – applicable from 2018:**
  - Only **one piece of evidence** for the identification of the location of customers is required for businesses with cross-border intra-Community sales of telecommunications, broadcasting and electronically supplied services amounting up to **€100 000** in the current and the preceding calendar year

        - The previous requirement for **two pieces of evidence** was deemed onerous for SMEs and microbusinesses in particular
    - Commission proposes the introduction of a **yearly VAT threshold of €10,000** under which cross-border sales for online companies are treated as domestic sales, with VAT paid to their own national tax administration

- **Action against VAT fraud:**
    - **Small consignments** imported into the EU that are worth less than **€22** are currently exempt from VAT, which the Commission maintains disadvantages EU businesses and currently provides opportunities for VAT fraud by non-EU businesses
    - The Commission therefore proposes to **remove the exemption** altogether
- **Extended One Stop Shop (OSS) – applicable from 2021:**
    - The current **Mini One Stop Shop (MOSS)** applicable to e-services will be extended to intra-Community distance sales of tangible goods and services other than e-services, as well as to distance sales of goods from third countries
    - This means that all companies that sell goods online may handle all of their VAT obligations in the EU through a **single digital online portal**, the OSS, hosted by their own national tax administration and in their own language
    - As part of the OSS, the applicable VAT rate for a transaction will be automatically calculated and the sum transferred to the country of the recipient
    - In parallel, the Commission proposes the **removal of the existing intra-Community distance sales thresholds** which, it argues, are a cause of distortions in the single market

In terms of **next steps**, for all four legislative texts, the **Council** will decide on (and amend) the Commission proposals by **unanimity**. **European Parliament** only provides its non-binding **opinion**, which de juro gives it delaying powers but this is seldom used. Work in the Council will begin on all four dossiers shortly at a **technical level** (tax attaches). A final agreement on them will be formulated and concluded at the Finance Ministerial level within the upcoming months.

## Commission refers France to the Court of Justice for discrimination in the taxation of dividends – 8 December

The European Commission has referred **France** to the **Court of Justice of the EU (CJEU)** for suspected discriminatory provisions in its tax treatment of **dividends**. Commission argues that France has interpreted and implemented a 2011 CJEU ruling (C-310/09) ruling in a way that is incompatible with EU law. The dispute relates to the refund of taxes paid in France by companies with subsidiaries in other EU Member States. The Commission maintains that France does not take into account taxes already paid by non-French subsidiaries, limits the system of tax credits to one third of the dividend redistributed by a non-French subsidiary which in the Commission's interpretation constitutes a breach of the freedom of establishment, and maintains requirements concerning the evidence to be provided that does not comply with the criteria laid down by the CJEU's 2011 ruling.

# European Parliament

### PANA Committee hearing with Commissioner Moscovici, tax advisors under close scrutiny – 7 December

The **PANA Committee** of the European Parliament has held a public hearing with **Commissioner Moscovici** to discuss recent progress made at the EU-level in the area of anti-tax avoidance and -evasion. During the hearing, Commissioner Moscovici notably confirmed that there is significant Member State support for changing the **legal basis** for **public country by country reporting (CBCR)** from company law to taxation (and thus subject to unanimity decision). The role of the so-called **intermediaries** and **tax advisors** was one of the main topics discussed (including accountants and accountancy firms). The MEP **Dariusz Rosati (EPP/POL)** asked the Commissioner whether there is the need to regulate the activities of law and accounting firms that play a mediating role in tax avoidance and evasion. The Commissioner responded by re-iterating what the Commission is currently doing in the area: a **public Consultation** on tax advisors was launched on 10 November (see Tax Policy Update from 14 November for further details), which will be followed by an **impact assessment** and eventually a **legislative proposal** on disclosure rules for tax planning schemes at some point during 2017. The main goal of the Commission is to put an end to "aggressive tax planning" and to dis-incentivise advice providers through "dissuasive sanctions". He emphasised that the activities of advice providers of both illegal and legal tax planning schemes must be addressed. **Ludek Niedermayer (EPP/CZE)** lamented that too much attention has been paid on banks and accountants, whilst the role of **legal firms** and lawyers has been given a smaller role in the Committee. **Ana Gomes (S&D/POR)** mentioned that in Portugal a "private administrative tax center for arbitration" of disputes between tax authorities and taxpayers was established in 2011. The local tax administration has complained that the arbitration is time consuming and most often leads to the defeat of the tax authority since the arbiters are the same "accountants and lawyers" that assist taxpayers avoid their obligations. Finally, when asked by the MEP **Petr Jezek (ALDE/CZE)** about the possibility of a EU definition for **tax crimes**, the Commissioner replied that this is overall primarily a matter for Member States but in the area of **VAT** the European Anti-Fraud Office (OLAF) is working on something along the lines of a common definition.

# Council

### Progress report of the Code of Conduct Group to the Council – 28 November

The **Code of Conduct Group** on business tax has submitted a progress report to EU Finance Ministers on the progress of its work. The document includes indications of the state of play of the Group's work in areas such as **patent boxes** (where all Member States except **France** and **Italy** are considered to comply with the agreed criteria), the submission of guidelines on the issuing of **tax rulings** to the Council, **outbound payments** (where no agreement so far has been reached between the various options, i.e. coordination of withholding taxes, coordination of national defensive measures, or a 'toolbox approach' and work to find agreement between these will continue), as well as further work on the criteria to select and sanction **non-cooperative jurisdictions** (the jurisdictions to be screened should be chosen by **January 2017**).

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## ECOFIN Council discusses ATAD II, tax transparency, CCCTB, FTT – 6 December

The Finance Ministers of the EU have held their ECOFIN meeting during which significant developments took place on a number of tax dossiers. This will leave a solid basis for the **Maltese Presidency** to continue the tax work in the Council starting January 2017.

A major step on transparency was achieved, as the Finance Ministers approved the Commission proposal to grant **tax authorities** access to **anti-money laundering (AML)** information (for further details on the Commission proposal, please see the Tax Policy Update from 8 July). The information to be exchanged includes customer due diligence records as well as information from national beneficial ownership databases. The measures will enter into effect on **1 January 2018**.

On the Commission proposal to amend the **Anti-Tax Avoidance Directive (ATAD)** in order to address **hybrid mismatches** with third countries – the so-called ATAD II, there were high hopes for a political agreement before the end of the year but the work will now have to continue during 2017 and the Maltese Presidency. Last minute compromise versions of the text were prepared, and a number of Member States declared that they had not had sufficient time to carefully assess the changes. In the end, the Ministers could agree on a provisional compromise text that still left two issues open: the **exemptions** for the application of the rules on the financial sector requested by the **UK**, and the **date of implementation**. On the former point, Austria, France, Greece, Italy, the Netherlands and Greece opposed the British proposal. On the latter, the Netherlands has been asking for an optional later date of implementation of 2024 (as opposed to the proposed 2019) as the new measures would have an impact on the US companies present in the country. Several Member States, however, wished for the provisions to enter into force sooner rather than later, in a clear challenge to the Dutch position.

Moreover, the Finance Ministers adopted Conclusions (common preliminary views and political guidance for work at a more technical level) on the Commission's proposed **Common Consolidated Corporate Tax Base (CCCTB)**. The Conclusions call for a corporate tax system that provides **legal certainty** and stability for businesses, and urge the focus to be as a first instance on the 'common' element of CCCTB. On the **R&D incentives** in the 'common'-proposals, Member States express some scepticism as the Conclusions call for assessing whether there is a need for such provisions. Overall, Member States will focus, in the first instance, on the new elements of the proposal – those that were not in the initial 2011 one – and only then return to those aspects of the proposal that have already been subject to intensive discussions in the Council in the past five years.

Finally, in the area of the **Financial Transaction Tax (FTT)** currently prepared by 10 participating Member States through so-called 'enhanced cooperation', no progress took place as the Finance Ministers' agendas were full with other priorities. It was simply agreed that a draft legal text should be prepared to reflect recent progress, for discussion by national experts. The discussions on the FTT will continue in 27 January 2017. At least two major areas of contention still remain - the treatment of **pension funds** and safeguarding the real economy from potential harmful effects of the FTT. Whilst **Austria** – who is leading the work – remains optimistic, significant fatigue between the negotiators is clearly visible. **Wolfgang Schauble** of **Germany** questioned whether enhanced cooperation is indeed the most appropriate tool to advance on such a tax file.

### Several Member States want public CBCR to have tax as its legal basis – 6 December

As a follow-up to the European Commission's proposal for **public country by country reporting (CBCR)** published on 12 April this year, the **Legal Service (LS)** of the Council of the EU concluded in November that the legal basis for public CBCR should be in the area of tax, not company reporting. This means that the Commission proposal, which is not a part of the **Accounting Directive**, would have to be re-submitted in the form of a tax proposal and subject to a **unanimity decision** by all 28 Member States. The Commission LS has contested the Council LS's opinion, and the European Parliament is currently preparing its own legal opinion. Should public CBCR become a tax dossier, the European Parliament would only play a consultative role with no influence on the content itself. The European Commission could, in theory, ignore the Council LS opinion should a sufficient number of Member States wish to proceed on the basis of the Accounting Directive, but the provision can be afterwards challenged in the **Court of Justice of the EU (CJEU)** after the Directive's adoption.

Ahead of the **ECOFIN** meeting, the EU Finance Ministers held a closed-door discussion during which public CBCR and the Council LS opinion were also discussed. **Commissioner Moscovici** had stated earlier during the **PANA Committee** hearing (see article above) that a number of powerful Member States have expressed their preference for public CBCR to be addressed on the tax basis. At least Austria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Luxembourg and Slovenia are said to support the legal opinion of the Council LS. **Malta** has promised to address this issue during its Presidency taking place on the first half of 2017. The Permanent Representatives of EU Member States will meet on 15 December to discuss, amongst other topics, the question of the legal basis for public CBCR. In the meanwhile in **France** (which has otherwise been in favour of public CBCR), the constitutional Court has ruled that the national public CBCR law that has been under preparation is unconstitutional. This does not, however, directly relate to the Commission proposal even though some of the legal arguments against the national law are likely to apply in the case of a EU Directive too.

## Court of Justice of the EU

### Ruling on 'similar rights' in the VAT Directive – 8 December

The Second Chamber of the Court of Justice of the EU (CJEU) has issued a ruling on the concept of '**similar rights**' in the **VAT Directive**. The case-code is C-453/15. In the ruling, the Court establishes that the concept of 'similar rights' in Article 56(1) in the VAT Directive also includes **greenhouse gas emission** allowances.

### Ruling on VAT applicable to goods and interest paid on loans granted to farmers – 8 December

The Fifth Chamber of the Court of Justice of the EU (CJEU) has issued a ruling on **VAT** applicable to goods and interest paid on loans granted to **farmers**. The case-code is C-208/15. In the ruling, the Court establishes that an "integrated agricultural cooperation" providing for the delivery of goods to a farmer whilst granting him a loan intended for purchasing those goods constitutes a **single transaction**, supposing that the supply of the goods is the principal supply. The taxable amount of that single transaction is made up of both the price of those goods and the interest paid on the loans granted to the farmers.

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## International

### "Corporate America lobbies Trump for tax reversal" – 28 November

According to the Financial Times (article only available to subscribers), several **US businesses** are attempting to lobby the new President-elect **Donald Trump** in order to convince him to put an end to recently enacted measures to tackle tax avoidance inversion deals, introduced by the current Obama administration. The upcoming Trump administration is expected to introduce major tax reforms to the US tax system, supported by a Republican majority in both houses of the Congress.

### "Spain To Hike Corporate Tax Burden" – 5 December

According to Tax News, **Spain** is planning to increase its **tax yield** stemming from businesses. It will maintain the current 25% **corporate tax** rate, but introduce restrictions to **deductions**. The Government assesses that this will increase tax revenue by €4,65 billion. These restrictions include, notably, limit loss carry backs and introduces restrictions to loss relief from companies located in "tax havens" that lack an "appropriate level of tax". In addition, the Government will introduce reforms to modernise the country's **VAT system** and to better fight against **VAT fraud**. The changes include a real-time **VAT reporting** system.

### "Poland and the Czech Republic agree on cooperation in combating fraud with VAT" – 3 December

According to the International Tax Plaza, **Poland** and **Czech Republic** have signed a bi-lateral agreement to tackle **VAT fraud**. The agreement provides for the exchange of information that is relevant for anti-fraud purposes, and the establishment of direct cross-border cooperation.

### "Africa's crackdown on tax avoidance nets £204m to boost development" – 7 December

The Guardian has reported that more effective **tax audits** and better tax law enforcement has increased tax revenues in several developing countries by approximately €240 million, of which almost €120 in **Zimbabwe** alone. These efforts are the result of work undertaken under the project **Tax Inspectors Without Borders (TIWB)** which tackles **tax avoidance** through capacity building in the area of audits.

### "McDonald's to move international tax base to UK" – 8 December

As reported notably by Politico, **McDonald's** will move its international **tax base** to the **UK**. According to the company, the move does not aim to minimise its tax obligations but, rather, to render its operations more effective and cut costs. The move comes at a time where both the EU and the UK are preparing for tough **Brexit** negotiations, and the EU is undertaking ambitious measures to tackle 'aggressive tax planning' by multinationals. Several EU leaders have already expressed concerns that the UK might be attempting to tone down potential economic hits caused by Brexit through more aggressive tax competition. The country is planning to bring its **corporate tax** down to 17% by 2020.

### "Global public accounts committees unite for tax transparency push" – 9 December

According to Public Finance International, a number of members of **national parliaments** from across the world have signed an open letter calling on their governments to pursue greater **tax transparency**, after a tax transparency summit that took place in the UK last week. The event was organised by the UK's **Public Accounts Committee** with the purpose of finding common ground and greater coordination in the area of anti-tax avoidance and evasion.

## OECD

### Tax revenues reach new high as the tax mix shifts further towards labour and consumption taxes – 30 November

The OECD has published a number of reports that demonstrate a continuing increase in **tax revenues** in advanced economies. According to the data, the OECD average **tax-to-GDP** ratio increased in 2015, to 34,3%, compared to 34,2% in 2014 – the highest rate since the organisation started reporting such data in 1965. On the **consumption taxes** side, VAT constitutes the largest share of consumption tax revenues in the OECD, at an all-time high of 6,8% of GDP and 20,1% of total tax revenue on average in 2014.

### OECD holds regional meeting of the Inclusive Framework on BEPS for the Asia-Pacific region, Framework joined by 3 new jurisdictions – 1 December

The OECD has organised the first regional meeting of the **Inclusive Framework** on BEPS for the Asia-Pacific region in Manila, Philippines. The meeting brought together 50 representatives from 16 countries, four international organisations, the business community as well as civil society. The participants discussed, notably, latest developments on **BEPS implementation**, received an update on the progress achieved in developing "toolkits" to help **developing countries** in the implementation of BEPS measures, and provided an opportunity for the attendees to express their priorities for their region in terms of capacity building and training. In the meanwhile, the OECD also reported that the Inclusive Framework continues to grow as **Macau**, **Mauritius** and **Ukraine** signed up for it. This brings the total number of signatory jurisdictions to 90.

### OECD publishes updated guidance for CBCR and launches website on CBCR implementation progress – 5 December

The OECD has published updated guidance on the implementation of **country by country reporting (CBCR)**. The guidance is updated with regard to circumstances under which a notification must be sent to a tax authority in order to identify a reporting entity within a multinational group. Moreover, the OECD has launched a website to monitor the implementation of the BEPS Action 13 CBCR provisions by jurisdictions.

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## State Aid

### Greens-EFA Group publishes report on tax avoidance by Zara – 9 December

A report published by the **Greens-EFA Group** of the European Parliament argues that the clothing retailer **Zara** has been **avoiding taxes** amounting up to €585 million. According to the report, Zara's parent company **Inditex** bypassed higher corporate tax regimes in **France** and **Spain** in favour of countries such as the **Netherlands**, **Ireland** and **Switzerland** – known for their lower than average corporate tax rates. The report puts forward a number of **recommendations** to address tax planning techniques as the ones employed by Inditex, including **public country by country reporting (CBCR)**, a mandatory **Common Consolidated Corporate Tax Base (CCCTB)** as well as a common EU-wide **minimum corporate tax rate**. According to Euractiv, the **European Commission** has taken note of the report and its findings, and welcomes it as it adds further political pressure on policy-makers to take effective action against 'aggressive tax planning' by multinationals.

## Other News

### "Trump's tax: one budget buster and one revenue raiser" – 27 November

**Robert Pozen** has written an article in the Financial Times (only available to subscribers) on the potential winners and losers of the President-elect **Donald Trump's** tax plans. Mr. Pozen refers to two aspects of Trump's proclaimed tax plans in particular; the planned reduction of the **corporate tax** rate to 15%, and a 15% annual tax on foreign profits. He argues that whilst the latter proposal has potential in improving the US tax system for taxing foreign profits, the former will cost dearly in tax income whilst not providing any significant benefits to the economy.

### "US Business Urges Trump To Slash Corporate Tax Rate" – 30 November

According to Tax News, the US business association **Reforming America's Taxes Equitably (RATE)** has called on the President-elect **Donald Trump** to cut the US **corporate tax** rate during 2017. RATE consists of 34 US companies and associations accounting for almost one-third of all private sector employees in the country. In the letter, RATE argues that currently US businesses pay an average 32,5% in corporate income taxes – a rate which the association argues is unfair and "counter-productive".

### "Cristiano Ronaldo hit by tax avoidance scandal" – 5 December

According to the European Parliament Magazine, the famous professional footballer **Cristiano Ronaldo** has been accused in the Spanish press for **tax avoidance**. According to the allegations, Ronaldo has been using an Irish company to invoice most of his advertisement income – in violation of Spanish tax rules – and thereby paying a mere 12,5% on this income as opposed to the otherwise applicable 43,5%. Ronaldo is, moreover, accused of moving €63.5m to the **Virgin Islands**. These revelations are part of a wider 'football leaks' implicating big football names such as Ronaldo and the manager **Jose Mourinho**. The **Greens-EFA Group** of the European Parliament has already reacted to these revelations. Speaking on behalf of the Group, **Molly Scott Cato (Greens-EFA/UK)** is calling for a minimum EU corporate tax rate, for the PANA Committee to investigate the football leaks as well, and for the EU list of non-cooperative jurisdictions – expected for next year – to also include "tax havens" within the EU itself, as opposed to the current focus on third countries.

### Eurodad report: "Europe's role in supporting an unjust global tax system 2016" – 7 December

The civil society organisation **Eurodad** has published a report on the role of European countries in the **global tax system**. The report entails several findings on the functioning of EU Member States' tax systems, countries' positioning on key tax issues, and transparency. The report bases its analysis on latest Commission data, which demonstrates notably that the number of rulings has increased from 547 in 2013 to 1444 in 2015 – or an increase of 160%. The number of **tax rulings** granted by **Luxembourg** to multinationals have increased by 50% since the Luxleaks scandal back in 2014.

### "Noose tightens on tax havens in global crackdown" – 7 December

**Vanessa Houlder** has written an article in the Financial Times (only available to subscribers) in which she argues that there are dramatically decreasing opportunities for off-shore **tax optimisation** available to multinationals as a result of global efforts to address the issue. Such initiatives include the **Common Reporting Standard (CRS)** as well as the US **Foreign Account Tax Compliance Act (FATCA)**. Although certain wealthy taxpayers and their advisors are still seeking for means to go around the transparency and information exchange rules, the options are increasingly limited.

## MEP Questions & Answers

### VAT exemption for public postal services – 22 November

The European Commission has replied to a question asked by the MEP **Ole Christensen (S&D/DEN)** with regard to **VAT exemptions** granted to **public postal services**. In his question, Mr. Christensen refers to a recent Danish tax authority decision to put an end to the VAT exemption granted to the country's public postal services provider. He refers to the EU VAT Directive which grants VAT exemptions to public postal services, and asks the Commission whether the Government's decision is in line with EU law. In his reply, **Commissioner Moscovici** states that the exemption only applies to postal services in which the operator supplies in its capacity as the universal service provider. It does not concern specific services dissociable from the service of public interest, including services which meet special needs of economic operators. As such, services supplied by the public postal services for which the terms have been individually negotiated cannot be regarded as exempted since those services meet the special needs of the users concerned. He finally maintains that the Commission does not have any information on the change in the Danish tax authorities' policy, nor does it have any information which would suggest an infringement of the EU VAT provisions in Denmark.

## Black list of tax havens abolished by the Italian Government – 25 November

The European Commission has replied to a question asked by the MEP **Mario Borghezio (ENF/ITA)** with regard to the Italian Government's decision to abolish its **black list** of "**tax havens**". In his question, Mr. Borghezio states that since the 2016 tax year, it will no longer be necessary in Italy to list items previously considered as 'black list' costs separately in the tax return, and they will be deductible from taxable income in accordance with the normal rules instead. This, he maintains, constitutes an abolition of the country's black list of offshore tax havens. He therefore asks the Commission whether it is aware of the measure and what it will do about it. In his reply, **Commissioner Moscovici** confirms that the Commission has been informed by Italian authorities of the described amendments concerning their blacklist system for tax purposes. He, however, emphasises that Italy is fully committed to working together at the EU-level to device a common EU list of non-cooperative jurisdictions by the end of 2017.

## Combating tax avoidance, tax evasion, and money laundering – 1 December

The European Commission has replied to a question asked by the MEP **Ivana Maletić (EPP/CRO)** with regard to the fight against **tax avoidance**, **evasion** and money laundering. In her question, Ms. Maletić refers to an inadequate implementation of a number of relevant EU Directives on the exchange of tax information, money laundering and the supervision of credit institutions and investment firms as a contributing cause of the offshore structures as revealed by the **Panama Papers**. She therefore asks the Commission what it will do to ensure a greater effectiveness of these Directives. In his reply, **Commissioner Moscovici** lists a number of measures that the Commission has already undertaken to address the issue, including the ongoing consultation on **tax advisors** as well as further amendments to the Directive on Administrative Cooperation on taxation.

## Effective tax rate for Apple's competitors in Ireland – 2 December

The European Commission has replied to a question asked by the MEP **Bernd Lucke (ECR/GER)** with regard to the effective of **Apple's** competitors in **Ireland**. In his question, Mr. Lucke refers to the Commission's decision according to which Ireland has been granting Apple illegal state aid in the form of selective tax treatment that discriminates against the company's competitors in the country. He therefore asks the Commission which companies, exactly, it has classified as Apple's competitors and thus were the ones subject to unfair treatment, whether it has examined if any of these competitors also received selective tax incentives, and what is the **effective tax rate** of these competitors in Ireland. In her reply, **Commissioner Vestager** states that the requested information is contained in the **final decision**, which will be published once a **non-confidential** version has been produced. This non-confidential version will be made available on the Commission's website.

## False VAT numbers – 2 December

The European Commission has replied to a question asked by the MEPs **Monica Macovei (ECR/ROM)** and **Patricija Šulin (EPP/SVN)** with regard to false **VAT numbers**. In their question, the MEPs refer to the phenomenon of false VAT numbers used by employers in order to avoid more burdensome employment contracts. They therefore ask the Commission how it will address the issue. In her reply, **Commissioner Thyssen** (employment and social affairs) emphasises that although the Commission is committed to ensuring fair practices on EU labour markets, the enforcement of labour law and social security policies is a competence of Member States. She however lists initiatives that the Commission has undertaken to address abuse and fraud, and to ensure the exchange of relevant information and best practices between Member States.

## Retaliatory action regarding Commission ruling on state aid and Apple – 5 December

The European Commission has replied to a question asked by the MEP **Beatrix von Storch (EFDD/GER)** with regard to the Commission's **state aid** ruling on **Apple**. In her question, Ms. von Storch refers to the $14 billion fine imposed by the **US** on **Deutsche Bank (DB)**, and asks the Commission whether it sees this as a **retaliatory measure** against the Commission's ruling on Apple Ireland couple of weeks prior to the DB decision. In her reply, **Commissioner Vestager** states that the Apple decision was a state aid question, and that the Commission will not speculate behind the motivations of the described US action.

## Disadvantageous tax treatment of cars with internal combustion engines – 5 December

The European Commission has replied to a question asked by the MEP **Petr Mach (EFDD/CZE)** with regard to the disadvantageous **tax treatment** of cars with **internal combustion engines**. In his question, Mr. Mach refers to reports by the German media the Bundesrat has called on the Commission to review the present tax policies regarding the efficient promotion of **zero-emission mobility** and the introduction of new measures ensuring that by 2030 at the latest, only zero-emission passenger cars will be approved. He asks what the Commission's position is on this. In his reply, **Commissioner Moscovici** states that already back in 2011 the Commission proposed a reform of EU **energy taxation** rules where the energy tax would be split into a tax on $CO_2$ emissions and a general energy consumption tax. The $CO_2$ tax would have allowed for removing the favourable taxation of diesel, but this was rejected by the European Parliament and by a majority of Member States. The proposal was therefore withdrawn in March 2015. He however maintains that the Commission still believes that a properly designed energy taxation system should be **technology-neutral**, provide an advantage for more environmentally-friendly vehicles, promote responsible consumer behaviour and encourage moving away from fossil fuels.

## Modifying VAT for feminine hygiene products (II) – 5 December

The European Commission has replied to a question asked by the MEP **Josep-Maria Terricabras (Greens-EFA/SPA)** with regard to **VAT** applicable to **feminine hygiene products**. In his question, Mr. Terricabras asks the Commission whether it is considering including in its anticipated VAT rate proposal a mechanism to promote reduced VAT on feminine hygiene products. In his reply, **Commissioner Moscovici** states that the VAT is a **general consumption tax** designed to be as broadly based as possible. It is consequently not the most appropriate instrument to target specific population groups. The Member States will, however, be given more flexibility in their VAT rates policies as part of the VAT Action Plan reforms.

## Application of super-reduced VAT rates for fish in view of its health benefits – 5 December

The European Commission has replied to a question asked by the MEP **José Blanco López (S&D/SPA)** with regard to **super-reduced VAT** applicable to **fish** on the basis of its health benefits. In his question, Mr. López asks the Commission whether it will recommend for the Member States to reduce a super-reduced VAT on fish, due to its significant health benefits. In his reply, **Commissioner Moscovici** maintains that the **VAT Directive** already allows for the application of a reduced VAT rate on certain food items, including fish. Super-reduced rates are only exceptionally allowed if they were already in place before 1991. He however re-iterates that the Commission will propose more flexibility to be given to Member States in their VAT rates policies as part of the VAT Action Plan reforms.

## Lost profits and reporting on the Commission's investigation of Apple – 6 December

The European Commission has replied to a question asked by the MEP **Nikos Androulakis (S&D/GRE)** with regard to lost profits and reporting on the Commission's **Apple investigation** in **Ireland**. In his question, Mr. Androulakis asks the Commission whether any country has asked the Commission to indicate how much tax Apple has possibly avoided within its jurisdiction, and whether the Commission knows how much Apple earner during the investigated period in **Greece**. In her reply, **Commissioner Vestager** maintains that the Commission's investigation did not focus on the taxation of Apple companies in Member States other than Ireland. The Commission decision does not question Apple's choices on how it has designed its company structure around Europe. Having said that, the tax authorities of other Member States could, within their own national powers, reconsider the tax assessment of Apple's operations in their territory. If such an assessment led to the conclusion that Apple had a taxable presence in other Member States to which part of the company's profits would need to be allocated, this could reduce the taxable profits in Ireland.

## The cost of compliance with VAT collection requirements – 7 December

The European Commission has replied to a question asked by the MEP **Tomasz Piotr Poręba (ECR/POL)** with regard to the **cost of compliance** with **VAT collection** requirements. In his question, Mr. Poręba maintains that the cost of compliance with VAT requirements across the EU is one of the most significant **non-tariff barriers**. He maintains that the **mini-one-stop-shop (MOSS)** seems to be an adequate tool to address this issue. He therefore asks the Commission how it assesses the effectiveness of MOSS so far, and to what degree it believes that the VAT MOSS can help eliminate non-tariff barriers. In his reply, **Commissioner Moscovici** states that an assessment of the MOSS has already taken place. It demonstrates that Member States are overall satisfied with the MOSS, and has reduced average annual compliance costs by €40,000 per company. A number of challenges were identified as well, including the lack of a cross-border sales threshold. However, most of these have been addressed in the Commission's proposal to modernise VAT for **cross-border B2C e-commerce** (see article above), which will moreover expand the scope of MOSS and thereby further reduce costs of VAT compliance for companies active in these sectors.