ACCOUNTANCY EUROPE.

UPDATE

TAX POLICY

20 – 31 MARCH

HIGHLIGHTS

- International: G20 Summit calls for progress on tax certainty and digitalization for taxation – 17/18 March
- Council: ECOFIN meeting discusses VAT proposals – 21 March
- Other news: Oxfam publishes report on "tax haven" practices of large banks, using public CBCR data – 27 March
- Other news: ACCA and IFAC publish a survey on public trust in tax – 27 March
- OECD: new report on the potential of technology to prevent, identify and tackle tax evasion and tax fraud – 31 March

EUROPEAN PARLIAMENT

ECON COMMITTEE DISCUSSION ON TAX DISPUTE RESOLUTION PROPOSAL – 23 MARCH

The ECON Committee has held its first exchange of views on the European Parliament's draft report on **tax dispute resolution** (for more details on the draft report, please see Accountancy Europe's Tax Policy Update from 17 March). **Angelika Mlinar (ALDE/AUT)** spoke on behalf of the leading MEP on the dossier, **Michael Theurer (ALDE/GER)** who could not be present at the debate. She presented the report drafted by Mr. Theurer, and the main proposed amendments to the original Commission proposal. The rapporteur welcomes the Commission proposal but, there is room for improvements. The procedural deadlines should be even shorter. Moreover, if the application of the mechanism proves successful, it should be opened to more or all double taxation disputes (including **indirect taxes**, inheritance taxes etc.). The performance of competent authorities should also be enhanced, and for this purpose Member States should dedicate adequate resources to them. Finally, no sanctions should be imposed on taxpayers on a same case until a binding decision has been taken. **Burkhard Balz (EPP/GER)**, for his part, called for a permanent advisory committee to continue shortening processing times. **Olle Ludvigsson (S&D/SWE)** emphasised the need for a full CCCTB as this would in his view prevent most double tax disputes – at least as far as multinationals are concerned. He thanked the Commission proposal for enhancing business confidence, and urged to reduce Commission's proposed timescale by half (i.e. maximum of one year for settling a dispute instead of two).

In terms of **next steps**, the deadline for amendments is 23 March, whilst an ECON vote is scheduled for 8 June. As a reminder, the European Parliament has no say on the content of the proposal, and may only submit its non-binding opinion.

ECON COMMITTEE DISCUSSION ON VAT APPLICABLE TO E-PUBLICATIONS – 27 MARCH

The ECON Committee has held its first exchange of views on the European Parliament's draft report on granting Member States the freedom of applying **reduced VAT** rates on **e-publications** in line with the rates applicable to physical ones (for further details on the European Parliament's draft report, please refer to Accountancy Europe's Tax Policy Update from 17 March). The discussion demonstrated a significant consensus on the Commission proposal amongst the different MEPs. The MEPs applauded the Commission proposal to grant Member States the *option* of applying reduced rates – as opposed to making the equal VAT treatment of physical and e-publications compulsory across the EU. The leading MEP on the dossier, **Tom Vandenkendelaere (EPP/BEL)** expressed some concern on the prospect of the proposal being held 'hostage' by some Member States – a clear reference to a prospective Czech veto of the e-publication proposal if the proposal on a **reverse charge mechanism** is not amended in a way that would allow it to apply the scheme. A representative from the European Commission, however, maintained that the Commission is expecting an agreement in the Council sooner rather than later. In terms of **next steps**, the vote in the ECON Committee will take place on 3 May whilst a Plenary vote is expected for mid-May. However and as is the case for all EU tax proposals, the European Parliament may only submit its opinion which the Member States do not need to take into account.

ECON COMMITTEE VOTES ON ATAD II – 27 MARCH

The ECON Committee has voted on the draft report on **hybrid mismatches** towards third countries (for further details on the draft report, please see Accountancy Europe's Tax Policy Update from 17 February). The draft report is the European Parliament's reaction to European Commission's proposal to address hybrids with third countries as part of the **Anti-Tax Avoidance Directive (ATAD II)**. The Committee adopted the draft report almost unanimously, with 44 votes in favour and two abstentions. The draft report introduces the definition of "**disregarded permanent establishment**", and expresses scepticism towards the Council's decision to provide exemptions for the **financial sector**. As is the case for all EU tax proposals, the European Parliament may only submit its opinion on the Commission proposal which the Member States do not need to take into account.

COUNCIL

BELGIUM, SLOVAKIA AND SLOVENIA URGED TO MAKE PROGRESS ON FTT – 21 MARCH

Belgium, **Slovakia** and **Slovenia** have been called on to make progress and indicate their agreement with a proposed exemption for **pension funds** from the **Financial Transaction Tax (FTT)** by May. The call came from the other seven Member States working together on a FTT. The Belgian Government will be a major stumbling block, as it has called for an exemption for **insurers** as well – a proposal that has harnessed little to no support from the others. **Austria** has warned that the three countries' governments will have to make up their minds on the compromise solution by May, or else the FTT negotiations will fail.

ECOFIN COUNCIL DISCUSSES VAT – 21 MARCH

The EU Finance Ministers discussed **VAT** at the March **ECOFIN** meeting. More specifically, the meeting discussed the Commission proposals to grant Member States the option of applying a **reduced VAT** rate on e-publications, as well as the proposal on the application of a **reverse charge mechanism** to combat VAT fraud – as a derogation to EU VAT rules. On the spotlight was the prospect of **Czech Republic** holding the VAT rate proposal as 'hostage', conditional to its preferred amendments to the reverse charge proposal. France has opposed such amendments, fearing that too many derogations might compromise the coherence of the EU VAT system. France is, in turn, one of the Member States that have vocally asked for the right to apply reduced VAT rates on e-publications.

On the **reverse charge mechanism** more specifically, both Czech Republic and **Austria** criticise the Commission's proposal. Czech Republic is concerned that the scheme could be dismantled after a mere six months if the Commission believes that it risks threatening the Single Market, but content that the final decision on this falls on

the Member States. Austria, for its part, is unhappy about the Commission's proposed criteria and conditions for the application of the reverse charge mechanism, which in their current form would exclude the country from applying it. **Germany**, for its part, has stated that it is content with the proposed criteria if Czech Republic and Austria agree with them. Discussions on the dossier will continue at a technical level in the upcoming weeks and months.

With regard to the **reduced VAT rates**, a major debate emerged as to whether super-reduced or even zero rates could be acceptable. Nine Member States currently apply either of the two on physical publications. A group of Member States, including Portugal, Hungary, Bulgaria and Latvia, are sceptical about the option of applying such super-reduced or zero rates on e-publications. The Maltese Presidency will aim for a deal on the reduced rate proposal by June 2017.

COUNCIL EXPERT GROUP DISCUSSES CCCTB – 22 MARCH

EU Member States' tax attaches and experts have held a meeting to discuss the **Common Corporate Tax Base** (**CCTB –** no consolidation) proposal. The so-called **cross-border loss offset mechanism** received much attention, as several Member States expressed concerns on the impact that the mechanism could have on their tax base. A major fear was that it could lead to an artificial transfer of losses to Member States higher corporate tax rates. The purpose of this temporal mechanism is to ensure that the CCTB is an appealing system for businesses even without the **consolidation** element. With regard to the so-called **super-deduction** on R&D, **France** and **Germany** had already announced their objection to the proposal, whilst **Ireland** and **the Netherlands** appear to have a preference for a tax credit rather than a tax deduction. The Maltese Presidency is, reportedly, also considering the option of **patent boxes** or harmonizing **tax breaks** for R&D as alternative options to the super-deduction. Overall, several Member States remain concerned about the impact of the various systems on their tax bases, whilst the Commission has attempted to consistently demonstrate that the measures would be budget neutral.

COURT OF JUSTICE OF THE EU – RULINGS

RULING ON VAT DEBTS – 16 MARCH

The Seventh Chamber of the Court of Justice of the EU (CJEU) has issued a ruling on **VAT debts**. The case code is C-493/15. In its ruling, the Court establishes that VAT debts may be declared irrecoverable under national legislation providing for a bankruptcy discharge procedure through enabling courts to, under certain conditions, declare irrecoverable the debts of a natural person which have not been settled by the close of the bankruptcy proceedings initiated against that person.

INTERNATIONAL

GERMANY RAISES THE PROSPECT OF CHALLENGING A US BORDER TAX IN WTO – 17 MARCH

According to the Financial Times (article only available to subscribers), **Germany** has joined the group of voices raising the prospect of disputing a prospective US "**border tax**" at the **World Trade Organisation (WTO)**. According to the German Minister of Economics, **Brigitte Zypries**, the only other option to such a dispute would be to adjust the international tax system to such a US tax on imports.

G20 SUMMIT ORGANISED IN BADEN-BADEN, COMMUNIQUE CALLS FOR PROGRESS ON TAX CERTAINTY AND DIGITALIZATION FOR TAXATION – 17/18 MARCH

The **G20** Finance Ministers met under the auspices of the G20 meeting in **Baden-Baden** in mid-March to discuss a number of common challenges and areas of concern. In the Communique of the meeting, the Ministers notably call for further steps in the area of **tax certainty** in 2018, on which IMF/OECD submitted a background report for

the ministerial meeting (see article below in the OECD-section). In the Ministers' view, this should take, in particular, the form of implementing enhanced dispute prevention and dispute resolution within domestic legal frameworks and international tax treaties. Moreover, the ministers call for an interim report on **digitalisation for taxation** to be submitted by spring 2018.

"UBER FACES LEGAL CHALLENGE ON PAYING VAT" – 20 MARCH

According to the Financial Times (article only available to subscribers), **Uber** is facing a legal challenge related to **VAT** in the **UK**. According to the legal challenge, an employment tribunal case from 2016 ruled that Uber is providing a transport service and, as such, should charge a 20% VAT rate on its services – something the company is yet to do.

IFRS INTERPRETATIONS COMMITTEE DISCUSSES TAX TOPICS RELATED TO IAS 12 – 24 MARCH

According to the International Tax Plaza, the **International Financial Reporting Interpretations Committee (IFRIC)** has discussed tax topics in the context of the **International Accounting Standard (IAS) 12** on income taxes. As part of the discussion, IFRIC notably concluded that there is no need for the **International Accounting Standards Board (IASB)** to undertake new projects on the IAS 12.

"UBER CANADA CONCERNED OVER RIDE-SHARING TAX REFORM" – 24 MARCH

According to Tax News, **Uber Canada** has expressed concerns that planned changes to the country's **goods and services tax (GST)** could have a negative impact on citizens providing or using **ride-sharing** services. Recently proposed amendments to the GST system would introduce a level-playing-field between ride-sharing businesses and taxis.

"MORE THAN $300BN DECLARED IN INDONESIA'S TAX AMNESTY" – 27 MARCH

According to Public Finance International, a **tax amnesty** scheme in **Indonesia** has resulted in the discovery of approximately $342 billion worth of previously un-declared assets both abroad and domestically. The scheme was designed to attract individuals and companies with undisclosed assets to come forward by waiving duties and sanctions and offering preferential tax rates. According to the article, the amount of undeclared assets corresponds to 1/3 of the whole country's GDP.

"DIGITAL TAX WILL CAUSE £330M IT BURDEN ON SMALL BUSINESSES" – 29 MARCH

According to the Financial Times (article only available to subscribers), small businesses are expected to spend approximately £330 billion on new IT equipment as part of meeting the requirements of the **UK** government's plans to digitise the British tax system. These requirements include, amongst others, keeping **digital records** and submitting quarterly updates to the HMRC. The transition constitutes a part of the so-called "making tax digital" programme, which the HMRC emphasises will in the longer term provide benefits to smaller companies from reduced administrative costs and burdens. An Accountancy Age article refers to survey results indicating that only 35% of smaller companies are currently using appropriate accounting software.

"CREDIT SUISSE FACES TAX PROBES IN MULTIPLE COUNTRIES" – 31 MARCH

According to the Financial Times (article only available to subscribers), **Credit Suisse** is facing simultaneous tax investigations in the **UK**, the **Netherlands** and **France**. The investigations come at a time when **Switzerland** is attempting to reform its tax system and get rid of its negative reputation as a 'tax haven'.

"EU: NO TRADE DEAL IF UK BECOMES A TAX HAVEN" – 31 MARCH

According to Politico, the European Council's draft negotiation guidelines for **Brexit** state that there will be no deal with the **UK** if it transforms itself into a "**tax haven**". The guidelines state that any future trade agreement between the EU and the UK will be established on the condition that the country refrains from "unfair competitive advantages through, inter alia, **fiscal**, social and environmental dumping".

OECD

IMF/OECD REPORT ON TAX CERTAINTY – 18 MARCH

The **IMF** and OECD have published a report on **tax certainty** for the meeting of **G20** Finance Ministers taking place in **Baden-Baden** (for further details on the meeting, see the International-section above). The report applauds the progress in fighting tax avoidance and evasion as part of the **OECD BEPS** project, but highlights that it is also important to focus on tax certainty. It focuses on the nature and origins of tax uncertainty, and puts forward certain **recommendations** to improve the status quo. These recommendations include enhanced international dispute prevention, **cooperative compliance**, simultaneous **joint audits**, reducing the complexity and improving the clarity of tax legislation, and improving predictability of tax administrations.

OECD PUBLISHES PUBLIC COMMENTS RECEIVED TO ITS CONSULTATION ON THE INTERACTION BETWEEN BEPS ACTION 6 AND THE TREATY ENTITLEMENT OF NON-CIV FUNDS – 24 MARCH

The OECD has published a compilation of the public comments received to its consultation on the interaction between **BEPS Action 6** (preventing treaty abuse) and the treaty entitlement of **non-Collective Investment Vehicle (CIV) funds**. Amounting to 196 pages, the compilation provides after one another comment letters received from a variety of organisations, including **Invest Europe**, **EY**, the **European Fund and Asset Management Association (EFAMA)** as well as **Deloitte**.

OECD PUBLISHES REPORT ON THE POTENTIAL OF TECHNOLOGY TO PREVENT, IDENTIFY AND TACKLE TAX EVASION AND TAX FRAUD – 31 MARCH

The OECD has published a new report on the potential of **technology** in the fight against **tax evasion** and fraud. The report looks, specifically, into how technology can be used to address electronic sales suppression and false invoicing, as well as issues related to the cash and the sharing economies. Moreover, the report provides real examples of **tax authorities** that have successfully adapted technology solutions to help prevent and detect tax evasion and fraud. For example, **Quebec** (Canada) has recovered €822 million in taxes following the introduction of sales recording modules into the restaurant industry. The module reduced the time required to audit a restaurant from 70 to 3 hours. As a result, the tax authority increased the number of inspections from 120 to 8000 per year. The report also points out the benefits for businesses, which can now be audited electronically and remotely. The

authors hope that the report will encourage other tax authorities to consider whether similar approaches could be effective in their jurisdictions as well.

STATE AID

"LUXEMBOURG TO SUPPORT IRISH APPEAL OVER APPLE TAX RULING" – 28 MARCH

According to the Irish Times, **Luxembourg** has committed to support **Ireland's** appeal in the **Apple** tax ruling case. The article implies that other EU countries might also be willing to support Ireland against the Commission decision. The Commission has also launched tax state aid proceedings against companies in **France** and the **Netherlands**, but neither of the two countries has confirmed their support for the Irish claim.

OTHER NEWS

"TRUMP'S TAKE ON CORPORATE TAX RATE COULD LOOK VERY MUCH LIKE OBAMA'S" – 27 MARCH

Andrew Sorkin has written in New York Times that the Trump Administration's **corporate tax reduction** target has decreased from the ambitious 15% to 20% or more. Mr. Sorkin speculates that with the failed repeal of **Obamacare**, the reduction could amount to 28% - a mere seven-point decrease to the current 35% tax rate. 28% is the tax rate brought up by the former president **Barack Obama**. Obama's proposal was shot down by the Republicans for a lack of ambition, and Mr. Sorkin states that it will therefore be interesting to see how the Republican-controlled Congress will react to Trump's proposal. In parallel, **Penelope Williams** and **Christopher McLemore** argue that Trump's tax reforms are increasingly looking like an inevitability, as the Administration has demonstrated its determination for swift reforms in other policy areas.

TAX JUSTICE NETWORK: NEW ESTIMATES REVEAL THE EXTENT OF TAX AVOIDANCE BY MULTINATIONALS – 22 MARCH

The civil society organisation **Tax Justice Network (TJN)** has published new figures providing an estimation of the scale of **corporate tax avoidance** across the globe. TJN provides a figure of $500 billion – lower than the $600 billion estimation put forward by the **IMF** – but argues that the impact of tax avoidance in developing countries is even higher than previously thought. TNJ has published an interactive map (see link above) demonstrating the amount of tax revenue losses due to corporate tax avoidance on a per-country basis.

OXFAM PUBLISHES REPORT ON "TAX HAVEN" PRACTICES OF LARGE BANKS, USING PUBLIC CBCR DATA – 27 MARCH

The civil society organisation **Oxfam** has published a report on the use of "**tax havens**" by large banks, on the basis of **Country by Country Reporting (CBCR)** data that banks have had to publicly disclose as a result of amendments to the **Capital Requirements Directive (CRD IV)** introduced in 2013. According to the report, 20 large European banks have reported a total of €25 billion of their profits in "tax havens", amounting to 26% of their total profits. In parallel, those jurisdictions account for only 12% of the banks' total turnover and a mere 7% of their employees. The banks, moreover, made €4,9 billion in profits in **Luxembourg** – more than the **UK**, **Germany** and **Sweden** combined. As a reaction to the report, the **European Commission** has argued that there are no "tax havens" in the EU.

ACCA AND IFAC PUBLISH A SURVEY ON PUBLIC TRUST IN TAX – 27 MARCH

ACCA and the **International Federation of Accountants (IFAC)** have published a survey on **public trust** in tax. The survey is based on interviews of nearly 8000 citizens in **G20** countries. According to the results, 57% of the respondents trust in the accountancy profession in the area of tax, 73% maintain that paying taxes is a matter of laws and regulations rather than fairness and morals, and 52% believe that high income earning individuals are paying a reasonable amount of tax.

MEP QUESTIONS & ANSWERS

JEAN-CLAUDE JUNCKER'S EFFORTS TO HOLD BACK THE FIGHT AGAINST TAX EVASION – 13 MARCH

The European Commission has replied to a question asked by the MEP **Dominique Bilde (ENF/FRA)** with regard to the supposed role of the Commission President **Jean-Claude Juncker** in holding back the fight against **tax evasion**. In her question, Ms. Bilde refers to leaked documents obtained by the Guardian newspaper that appear to demonstrate **Luxembourg's** veto to progress on key tax files whilst Juncker was still the country's Prime Minister. She, therefore, ask the Commission what follow-up it will take on the basis of these revelations. In his reply, **Commissioner Moscovici** states that the Commission does not comment on articles that have appeared in the press. He emphasises the progressive and diligent work of the current Commission – led by Juncker – in the fight against tax avoidance and evasion, as well as the cooperation that the Commission has demonstrated in its dealings with the TAXE I, TAXE II and PANA Committees.

EU HARMONISATION OF VAT RATES – 16 MARCH

The European Commission has replied to a question asked by the MEP **Claudia Țapardel (S&D/ROM)** with regard to EU harmonisation of **VAT rates**. In her question, Ms. Tapardel asks the Commission whether it will propose minimum and maximum VAT rates, how it plans to resolve the question of VAT-free zones in the EU, and what priority areas are being envisaged for the application of reduced VAT. In his reply, **Commissioner Moscovici** re-iterates the planned two options for VAT reform that the Commission will present to the Member States in the upcoming months. The Commission is not planning to establish maximum VAT rates, nor does it indicate its priorities for reduced VAT rates.

IRELAND'S TRANSFER PRICING LEGISLATION – 17 MARCH

The European Commission has replied to a question asked by the MEP **Matt Carthy (GUE-NGL/IRL)** with regard to **Ireland's transfer pricing** legislation. In his question, Mr. Carthy refers to the Commission's **Apple** ruling, and asks the Commission whether as part of its investigation it examined whether the provisions of Irish tax law that attempt to exclude branches from the remit of the 2010 transfer pricing legislation comply with EU law on transfer pricing as well as with the OECD's Transfer Pricing Guidelines. In his reply, **Commissioner Moscovici** states that the Commission ruling did not look into whether specific provisions of Irish tax legislation comply with EU law, and its state aid investigations only assess whether specific policies may have a negative impact on the competitive landscape within the Single Market.

OFFSHORE COMPANIES INVOLVED IN FOOTBALL – 17 MARCH

The European Commission has replied to a question asked by the MEPs **Hugues Bayet (S&D/BEL)** and **Marc Tarabella (S&D/BEL)** with regard to **offshore companies** and football. In their question, the MEPs refer to the numerous tax scandals and ask the Commission what action it will take against **tax evasion**, whether it would establish an agency to monitor abuses of tax law, and what action the Commission will take to address tax fraud in sports specifically. In his reply, **Commissioner Moscovici** states that since the Commission itself is not a tax

investigative body, it has no plans to set up a monitoring agency. Investigation and prosecution of individual tax cases are a matter for the Member States involved.

IRELAND'S TAX RULINGS AND TRANSFER PRICING COMPLIANCE – 20 MARCH

The European Commission has replied to a question asked by the MEP **Matt Carthy (GUE-NGL/IRL)** with regard to **Ireland's** tax rulings and **transfer pricing** compliance. In his question, Mr. Carthy refers to the Commission's **Apple** ruling, and asks whether the Commission found evidence of possible selective advantage conferred on other companies through its investigation. He asks, moreover, what are the implications of the Commission's findings on Ireland's transfer pricing regime and its compliance with international standards (OECD and EU) on the **arm's-length principle**, and whether the exclusion of branches from Ireland's transfer pricing legislation affects its compliance. In his reply, **Commissioner Moscovici** confirms that the Commission has analysed rulings granted to 14 different multinationals in Ireland. However, the question of whether Ireland's transfer pricing regime, which has been in place only since 2010, is in compliance with international standards is outside the scope of state aid control.

INCONSISTENCY IN IRISH REVENUE TAX RULINGS – 23 MARCH

The European Commission has replied to a question asked by the MEP **Matt Carthy (GUE-NGL/IRL)** with regard to inconsistencies in **Ireland's revenue tax rulings**. In his question, Mr. Carthy refers to the Commission's **Apple** ruling and indications according to which the Commission had looked into nine other cases related a lack of consistent criteria applied to determine the allocation of profits to Irish branches of non-resident companies. He asks the Commission whether the logic it applied in its Apple decision also applies in the nine other cases, and whether any of the other nine companies are under state aid investigation. In his reply, **Commissioner Moscovici** confirms that the Commission did not conclude on whether any of the other profit allocation rulings led to the granting of state aid. There is currently no formal investigation by the Commission into the tax treatment of any other company by Ireland.

EVENTS

- 11/04/2017, ***Reforming European VAT: Boosting Trade and Achieving Modernisation***, Public Policy Exchange, Brussels. Source
- 26-27/04/2017, ***The Panama Papers, one year on: Fighting money-laundering and tax dumping***, GUE-NGL, Brussels. Source
- 30/05/2017, ***Tax Day 2017***, Accountancy Europe, Brussels. Source
- June, ***Conference on fair taxation***, European Commission, Brussels. Further details tbc