ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

21 August – 1 September

HIGHLIGHTS

- Council: Post-summer refresher: State of play of key tax files – August
- European Parliament: ECON Committee Debates C(C)CTB and VAT – 30 August
- International: Trump announces tax reform season – 30 August

European Commission

Commission publishes taxation trends report – 23 August

The Commission has published the latest annual Taxation trends report. The report shows that revenues from consumption taxes (including VAT and excise duties) for the EU-28 increased as a percentage of GDP in 2015. However, the share of consumption taxes out of total revenue increased only slightly to 28.7% compared to 28.5% in 2014. The report also demonstrates that the average top corporate tax rate from 22.5% to 21.9% between 2016 and 2017.

The Taxation trends report provides detailed statistical and economic analysis of the tax systems of the 28 EU Member States, as well as Iceland and Norway. The report also includes country chapters where, for each country, key tax indicators are provided on tax revenues as a percentage of GDP for the years ranging from 2003 to 2015. These are supplemented by tables presenting the latest tax reforms in each country.

European Parliament

EUROPEAN PARLIAMENT STUDY ON MEMBER STATES' CAPACITY TO FIGHT TAX CRIMES – 25 August

The European Parliament has published a study on the capacity of EU Member States to fight against tax crimes. The study investigates national provisions to combat tax avoidance, tax evasion and money laundering and to ensure the enforcement of relevant laws. Furthermore, it examines the administrative capabilities of Member States to tackle these challenges. Finally, the study reviews the specific interventions of Member States in

response to the Panama Papers. Overall, the study aims to evaluate whether the legal framework and the institutional arrangements in place are adequate, what their deficiencies and how they could be addressed.

ECON Committee Debates C(C)CTB and VAT – 30 August

A number of tax debates took place at the ECON Committee in what was the Committee's first work week after the summer break. The debates covered the two CCCTB proposals, as well as two VAT files on e-commerce, and administrative cooperation and the fight against fraud. As a reminder, the CCTB dossier is led by the MEP **Alain Lamassoure (EPP/FRA)**, whilst **Paul Tang (S&D/NLD)** is in charge of CCCTB. On the VAT side, **Catalin Sorin Ivan (S&D/ROM)** is leading on e-commerce, and **Ludek Niedermayer (EPP/CZE)** on administrative cooperation.

On all of these files, the European Parliament may only submit its opinion, whilst the actual decision is taken by all Member States by unanimity. However, in accordance with CJEU case law, the European Parliament must have submitted its opinion before the proposals can become EU law.

Heated discussion on CCCTB

The CCCTB debate brought under the spotlight significant disagreements between MEPs. As was to be expected, however, most of the criticism stemmed from the Eurosceptic ECR-Group.

Paul Tang proposed, in his draft report, to introduce a minimum corporate tax rate in the EU. The proposal was starkly opposed during the debate by MEPs such as **Petr Jezek (ALDE/CZE)** and **Bernd Lucke (ECR/GER)**, arguing that minimum tax rates should not be a part of CCCTB.

Mr. Lucke was also critical of Mr. Lamassoure's proposal to allocate parts of CCCTB's revenues to the EU budget. **Sander Loones (ECR/BEL)**, for his part, was concerned that CCCTB would have a negative impact on smaller countries' revenues, whilst mainly benefitting larger economies. In his CCTB draft report, however, Mr. Lamassoure attempts to curtail such concerns by proposing a temporal compensation fund for countries whose revenues might suffer short-term losses from the system. The Greens-EFA Group appears to be opposed to such a compensation fund, however.

On other issues, **Lieve Wierinck (ALDE/BEL)** and **Marco Valli (EFDD/ITA)** expressed support towards the two rapporteurs' proposal to implement both CCTB and CCCTB in parallel. By contrast, the Commission has proposed a two-year gap between the two. **Pervenche Beres (S&D/FRA)**, for her part, called for an impact assessment of the tax incentives proposed by the Commission. Her fear is that the incentives may lead to new tax avoidance opportunities.

At the end of the debate, **Uwe Ihli** from the Commission acknowledged that digitalization and digitalized services are particularly challenging areas of work. He confirmed, with this regard, that the Commission is looking forward to the discussion on taxing the digital economy that the Estonian Presidency plans to host at the informal ECOFIN on 15-16 September. He also emphasized the need for a thorough analysis of the digital sector, stated that addressing digital companies in C(C)CTB (such as the use of 'digital presence' as proposed by the rapporteurs) is only a partial solution, and that ultimately a globally coordinated approach to digital companies is needed.

In terms of next steps, the deadline for amendments for CCTB is on 25 September, and 26 September for CCCTB. An exchange of views with national parliaments will take place on 10 October, whilst the consideration of amendments will be on 6 November. A vote in ECON on both files is currently scheduled for 4 December, whilst a Plenary vote is expected for 18 January 2018.

Further details on the two CCCTB files are available in the Tax Policy Update from 21 July.

VAT: thresholds and date of implementation

By contrast, the two VAT debates went by without major disagreements. Perhaps the largest complication relates to the question of thresholds in Mr. Ivan's report on VAT for e-commerce. As a reminder, the Commission proposed

that companies with annual cross-border sales below €100,000 are entitled to simpler procedures for determining their clients' place of establishment. Businesses with a threshold below €10,000 would be eligible to apply their national VAT rules.

Cora Van Nieuwenhuizen (ALDE/NLD) has proposed to increase the smaller threshold to €35,000, whilst the Greens-EFA Group would like to see this threshold increased to €100,000. The larger threshold, for its part, should be reduced from €100,000 to €35,000, according to the Greens. **Werner Langen (EPP/GER)**, for his part, stated his support for the initial Commission thresholds. The rapporteurs will meet in September to try to find a compromise to the threshold question.

With regard to the file on administrative cooperation, no controversies are to be expected. Mr. Niedermayer stated that the vote "will not be a complicated one", with a mere 22 amendments tabled. The S&D group is calling for the date of entry into force of the proposal to be in 2019, rather than the Commission's proposed 2021. The Commission argues, however, that its choice of 2021 is based on practical considerations, as national tax administrations will need sufficient time to prepare for implementation.

In terms of next steps, the Committee vote will be on 9 October and Plenary on 11 November for the e-commerce dossier. For the file on administrative cooperation, no estimates have been published yet for prospective vote dates, although they are likely to take place around the same time as for e-commerce.

Council

Post-summer refresher: State of play of key tax files – August

With summer now officially over, EU institutions will resume their heavy work agenda for a busy autumn. On the tax side of things, a number of ongoing initiatives are still pending, and several new ones are expected to be proposed in the next three months to come.

Major VAT reform in the horizon

VAT will keep the Commission and the Council busy throughout the autumn and beyond. The following legislative initiatives are to be expected:

- The proposal for the definitive VAT regime for cross-border trade is to be expected for end-September or early-October. This will be a first step out of a total two for introducing the so-called 'destination principle'.
- A reform of the VAT rates is to be expected sometime between the definitive regime proposal and the end of the year. Two options are on the table: maintain the current minimum rate of 15% but extend the list of reduced rates, or grant Member States more flexibility with reduced rates as long as these are not detrimental to fair competition. This option would also include setting a number limit for reduced rates, and disqualifying certain items (like luxury goods).
- A proposal to amend the rules covering administrative cooperation in the area of VAT and to improve the fight against VAT fraud is to be expected by the end of the year. On the table, allowing for joint audits and reforming Eurofisc.
- A number of measures to simplify the VAT system for SMEs is to be expected by the end of the year. The Commission has expressed its concern that the current fragmented VAT rules in the EU are overly burdensome and complex for smaller companies to comply with.

On pending VAT files, the Estonian Presidency is aiming for a compromise on the VAT for e-commerce proposal in November. The main ongoing topic is the question of the so-called fulfilment houses, which the **UK** brought to other

Member States' attention in April. The Estonian Presidency will present a compromise on this question to the tax attaches on 6 September. The e-commerce proposal is a priority for the Presidency.

Finally, **France** and **Czech Republic** are working towards a compromise on the e-publications proposal. The Czechs are suspected of blocking progress on the file due to France's objections related to the reverse charge mechanism proposal, which the Czech government is pushing for. The Estonian Presidency is aiming for a political agreement on e-publications at the 10 October meeting of EU finance ministers.

Momentum continues on direct taxation

Despite a busy VAT autumn, the momentum is still very much there for direct taxation too. Although no new immediate direct tax legislation is to be expected, the Estonian Presidency will have its hands full just dealing with the myriad of ongoing initiatives.

- **Taxation of the digital economy:** as elaborated in the last Tax Policy Update, the Estonian Presidency will initiate discussions on taxing the digital economy at the informal ECOFIN on 15-16 September.
    - **France** and **Germany** will bring their own joint proposals on the table as well. France has been particularly vocal in this area – the government recently lost a court case against Google concerning the company's tax affairs. Moreover, Airbnb is in the middle of a scandal in France due to reports that it paid only negligible taxes in the country. The Estonian Presidency is aiming for finalising a Council roadmap on taxation of the digital economy by the end of its term, in December. The Commission may bring its own initial thoughts on the table in September as well, but no legislative proposal should be expected before 2018.
- **C(C)CTB:** uncertainty continues. A number of Member States – including **Denmark**, **Luxembourg** and **Belgium** – are concerned about the lack of a country by country impact assessment of the potential effects of a CCCTB on Member States' tax revenues. In turn, countries more benign towards the common base, such as France and Germany, are critical about the tax incentives of the Commission proposal. These incentives have the purpose of incentivising more critical Member States to approve the proposal. In summary, the situation is messy to say the least.
- **List of non-cooperative jurisdictions:** the list of non-cooperative jurisdictions is another tax priority for the Presidency. As reported earlier in the Tax Policy Updates, Member States are now discussing different possible sanctions regimes for non-compliant jurisdictions. 92 third jurisdictions have now received a letter from the EU, but not all had reacted in July. The blacklist is expected to be ready by the end of the year.
    - Apparently, there is a possibility that the first list will be empty as the purpose would be to encourage positive efforts, rather than imposing sanctions right away. In this scenario, a subsequent second list would follow after a period of monitoring to what degree third jurisdictions improve their tax systems.
- **Tax intermediaries:** against initial expectations, the tax intermediaries proposal is bound to cause some headache to the Presidency. Unlike VAT for e-commerce or the blacklist, this is not a top tax priority for the Estonians. Reportedly, at least **Belgium** and **Luxembourg** have already raised concerns about the additional burdens that the reporting and exchange of information on schemes could pose to tax authorities.
    - There is, reportedly, some agreement between member states that the hallmarks are not optimal. There is less common ground, however, on what should be done: whether the current list will be reduced, or re-drafted altogether. It is also likely that the hallmarks will be moved from the Annex

to the proposal's main body. No additional guidance on hallmarks should be expected, however, although greater clarity may come about on specific issues, e.g. what is meant by "implementation".

  - The next Ministerial meeting on the issue will take place at earliest on 10 October. Until then, it is difficult to accurately assess to what direction the proposal will be steered.

- **Public CBCR:** the European Parliament has now finalised its own negotiating position, which is in many ways not too different from the state of play of the Council negotiations. For example, the Parliament's position includes a so-called safeguard clause allowing companies to omit business sensitive information under certain conditions. This is comparable to the 'comply or explain' clause currently being discussed in the Council. Overall, there is a lot of progress at the technical level but severe disagreements still exist on the legal basis. There is no sufficient majority of Member States to change it.

Council to consider VAT derogation for Poland – 23 August

A new proposed VAT derogation has been published, this time to be granted to **Poland**. The derogation would allow Poland to apply the reverse charge mechanism to hard drives such as solid-state drives (SSDs) and hard disk drives (HDDs).

Poland has requested the derogation as a result of growing fraudulent practices on its hard drive market through the use of the "missing trader" mechanism (MTIC). The fraud mechanism consists of fraudulent operators registering entities at a specified address and for a period of time submitting tax returns. These entities wait for a right moment to perform a few large domestic sales, collecting VAT from customers and close their business without paying VAT. It is often impossible to audit the entities due to the use of virtual offices, frequent changes of the registered office, or the lack of documents regarding the performed transactions.

The derogation would apply from 1 January 2018 until 31 December 2020. The approval of the derogation will be up to the Member States by unanimity.

France insists its IP regime is not harmful – 28 August

Reportedly, **France** continues to insist that its patent box regime is not in violation with criteria agreed at EU and OECD levels. France argues, in particular, that the special 15% tax regime renders its patent box scheme unattractive for tax avoidance purposes. The Council's Code of Conduct group has, however, continuously insisted that since the 15% rate is well below the general French tax rate of 33,3%, the scheme is "potentially harmful". It appears that for now though, the Code of Conduct group continues to favour dialogue over concrete counter-measures.

International

"INDIA'S NEW TAX SYSTEM HIT BY SEVERE TEETHING PAINS" – 27 August

The new tax regime in **India** has hit its first obstacles as millions of companies have failed to access the online platform for the national GST, probably burdened by server traffic. Local accountants have reported that less than half of their clients have been able to complete their payment obligations.

Trump announces tax reform season – 30 August

President Trump has announced the broad lines of his tax reforms plans in his long-awaited speech. Trump's vision of tax reform in the **US** is based on four pillars: simplification, globally competitive, tax reliefs for middle-class

families, and repatriating taxable income currently held overseas by shifting away from taxing global income to domestic earnings. The latter, in particular, is expected to divide businesses.

Otherwise, Trump was economic with the details, as it will be up to Congress Republicans to draft the tax reform bill. The Republicans are aiming for a first draft within an ambitious timetable of the next few weeks. He did, however, re-iterate his objective of reducing the corporate tax rate from 35% to 15% - a number that several economists and analysts maintain is highly unrealistic at best. Furthermore, recent research claims that the tax reductions would have no meaningful impact on jobs anyway.

"Hammond Promises British Firms Stable Tax Policies" – 30 August

The **UK** Chancellor **Philip Hammond** has committed to pursuing a taxpayer certainty agenda. In particular, Hammond expressed his agreement in principle with Hammond said that he agreed in principle with simplifying the tax code for smaller businesses, aligning accounting rules and corporate tax rules, and enabling for other tax accounting simplifications for small companies specifically.

"Le Maire Outlines French Corporate Tax Cut Plans" – 31 August

Bruno Le Maire, the finance minister of **France**, has provided an overview of his government's plans for cutting corporate tax rates. The final aim is to progressively cut the current 33,3% standard rate to 25% by 2022. He elaborated on additional adjustments to the business tax regime, which is hoped to generate more employment in the country.

OECD

Global Forum releases second round of compliance ratings on tax transparency for 10 jurisdictions – 21 August

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) has published the first 10 outcomes of its new peer review process aimed at assessing compliance with international standards for the exchange of information on request between tax authorities. This latest round of peer reviews – launched in mid-2016 – follows a six-year process during which the Global Forum assessed the legal and regulatory framework for information exchange (Phase 1) as well as the actual practices and procedures (Phase 2) in 119 jurisdictions worldwide.

The review concludes that three jurisdictions – Ireland, Mauritius and Norway – are overall compliant. Six others – Australia, Bermuda, Canada, Cayman Islands, Germany and Qatar were rated as "Largely Compliant". Jamaica, however, was rated as "Partially Compliant", leading the Global Forum to launch a supplementary report on follow-up measures to ensure a higher level of compliance.

MEP Questions & Answers

Country-by-country reporting – 21 August

The European Commission has replied to a question asked by the MEP **Matt Carthy (GUE-NGL/IRL)** with regard to public CBCR. In his question, Mr. Carthy refers to the proposed threshold of €750 million, and asks the Commission what percentage of corporations with EU establishments will be affected by the proposal, and what

percentage of corporations with EU establishments would fall under the reporting requirements if a threshold of €40 million was used instead.

In his reply, **Vice-President Dombrovskis** refers to OECD estimates according to which a threshold of €750 million would capture 90% of turnover of multinational companies. This amounts to 10-15% of the multinational companies, meaning at least 6500 EU and non-EU groups. Of this, 6000 at least do business in the EU but less than 2000 are EU groups. According to Commission's estimates, if the threshold is reduced, the turnover volume captured would increase very slowly. With the €40 million threshold, at least 20 000 EU groups would be captured, on top of many more non-EU multinational groups with subsidiaries or branches in the EU.

Events

- 07/09/2017, ***Current Issues in European Tax Law***, Estonian Presidency, Tallinn, Estonia. Source
- 13/09/2017, ***Taxation of the sharing economy***, EESC. Tallinn, Estonia. Source
- 27/09/2017, ***Commerce and Industry Group Annual Conference – tax***, CIOT, London. Source
- 12/10/2017, ***Future of VAT: Digitalisation is here!***, Accountancy Europe, Brussels. Source
- 21/11/2017, ***FairTax meets COFFERS: Joint Perspectives on Fair and Sustainable Taxation***, Umea University, Brussels. Source