HIGHLIGHTS

- European Parliament: PANA Committee amendments published – 14 September
- Council: informal ECOFIN discusses digital taxation, four big member states harness support for an 'equalisation tax' – 15/16 September
- European Commission: Commission re-iterates its commitment to a digital tax proposal in 2018 – 16 September

European Commission

Commission publishes position paper on Customs related matters for Brexit – 6 September

The Commission has published a position paper establishing the principles for customs related matters after Brexit.

The paper outlines the possible customs status of goods that enter, leave or transit the customs and tax territory of the Customs Union, the UK or the EU 27. The paper also sets out the treatment in relation to VAT and excise duties, and licencing requirements. Furthermore, the Commission believes that principles have to be agreed on administrative cooperation procedures that are still ongoing upon the UK’s withdrawal date, as well as cooperation procedures launched after the withdrawal date.

State of the EU speech by Juncker – 13 September

The President of the European Commission, Jean-Claude Juncker, has delivered his annual State of the EU (SOTEU) speech to the European Parliament Plenary.

Overall, President Juncker expressed a more positive picture of EU’s performance and political existence, compared to the speech he delivered last year. Surprisingly, the big central parties of the Parliament (EPP, S&D, ALDE) agreed with him. However, the President did remind that member states still need to draw conclusions and take decisions on the future of Europe.

Specifically on tax, President Juncker called for simpler and more efficient decision making on fair taxation, the digital economy and the FTT by removing the unanimity requirement and moving to qualified majority voting (QMV)
instead. Tax policy progress has conventionally been hampered by veto-wielding smaller member states that are concerned by the impact of certain tax reforms on their tax yields and economy at large.

With this regard, the Irish business association IBEC has already issued a warning. It calls on Ireland to block any attempts to move towards QMV decision making on tax, so that Ireland can retain full sovereignty over its tax system.

**Informal ECOFIN aftermath: Commission re-iterates its commitment to a digital tax proposal in 2018 – 16 September**

Commission Vice-President Valdis Dombrovskis has issued remarks in the aftermath of the informal ECOFIN during which EU finance ministers exchanged views on the taxation of the digital economy (see article below in the ‘Council’ section).

The Vice-President calls for a common EU position on the matter by December, so that the member states can show a unified front at the OECD level. The Commission will, moreover, publish a Communication by 29 September in which it elaborates on its thinking. This Communication will list the different options on the table for taxing the digital sector. These will be followed by a legislative initiative on digital tax in 2018.

**European Parliament**

**PANA amendments published – 14 September**

The amendments to the PANA Committee report and recommendations have finally been published.

A total of 667 amendments have been submitted to the report (see here and here), and another 783 amendments to the recommendations (see here and here). The amendments cover a wide range of topics, ranging from the role of accountants and accountancy firms to whistleblowing, accounting standards, the IASB and AML.

Of particular interest, several amendments draw attention to the supposed “conflicts of interest” that stem from accountancy firms providing tax advice to private sector clients whilst assisting governments and authorities to plug loopholes in tax legislation. Most of these amendments originate from the far-Left GUE-NGL Group, but a number have also been submitted by influential S&D MEPs (e.g. amendments 454 and 455 to the draft report, and 567 of the recommendations). These amendments have a higher chance of surviving the final vote, although some forms of diluted compromise amendments are the most likely option at the end.

In terms of next steps, PANA Committee is currently scheduled to vote on 18 October. The Plenary vote, in turn, is expected for 14 November.

**JURI Committee publishes its opinion on C(C)CTB – 15 September**

The JURI Committee has published its opinions on the CCTB and CCCTB dossiers.

Both opinions have been drafted by the MEP Evelyn Regner (S&D/AUT), known for her diligent work on tax dossiers. She was, for example, leading European Parliament’s work on public CBCR.

The leading Committee of the European Parliament for C(C)CTB is ECON, which may or may not incorporate elements of JURI’s opinion into the two main reports. Either way, the European Parliament has no say on the
C(C)CTB dossier and may only submit its non-binding opinion. The actual decision is made by member states’ unanimity.

**Council**

**Estonian Presidency tax conference discusses tax intermediaries proposal, digital taxation – 7 September**

The Estonian Presidency has held a tax conference in Tallinn to discuss EU’s burning tax policy priorities such as the intermediaries proposal, digital taxation and the concept of ‘virtual permanent establishment’, and dispute resolution.

Regarding the tax intermediaries proposal, a representative from the UK’s HMRC presented the country’s positive experience with DOTAS, which was the inspiration for the Commission’s proposal as well. Furthermore, a representative of Estonia’s tax advisory industry strongly criticised the Commission’s proposal. She argued that the proposal entails a number of practical challenges, will distort competition between intermediaries and will constitute a significant administrative burden on intermediaries.

Moreover, Gunter Mayr from Austria’s finance ministry presented the government’s possible solution for taxing the digital sector. This solution is based on three pillars: defining ‘virtual permanent establishment’, extending the concept of ‘physical presence’ to ‘digital presence’, and carrying out a functional analysis. This would entail devising different solutions on the basis of analysing the different business models of the digital sector companies, which differ significantly from each other.

Austria’s current preference is for an international solution to digital sector taxation. However, the country is willing to consider EU-specific solutions if OECD’s work fails. The OECD will publish an interim report on its progress with the digital sector question in April 2018, with a final report expected by 2020.

**Informal ECOFIN discusses digital taxation, Four big Member States harness support for an ‘equalisation tax’ – 16 September**

Taxation of the digital economy continues to accumulate political momentum.

France, Germany, Italy and Spain have joined together to push for a so-called “equalisation tax” on large digital companies such as Google, Apple, Facebook and Amazon (GAFA). This comes on top of the Estonian Presidency’s initiative to discuss taxation challenges of the digital economy at the informal ECOFIN on 16 September.

The four countries express their desire to “move quickly” to taxing the turnover of digital companies, in a letter co-signed by the respective Finance Ministers. They call on the Commission to propose a legislative initiative. Importantly, the Member States are not calling CCCTB into question, and appear to see their initiative as a complementary, immediate-term solution to address the issue. The proposal seems to be comparable to the CCCTB, whereby a digital company’s turnover tax yields would be allocated between relevant countries through a specifically designed formula.

This urgency for action stems from a court case in France, in which the French government was defeated in its intention to retroactively collect additional taxes from Google. For further details on the court case, please refer to the Tax Policy Update from 21 July. Consequently, France has made it its priority to establish stringent and coordinated EU-level rules to address the low effective taxes that digital companies pay in certain countries.
**Bumpy road ahead**

However, several political and practical challenges remain.

First, at the EU level member states such as Ireland, Cyprus, Malta, Luxembourg or the Netherlands are likely to object such EU initiatives. They fear the impact that these measures might have on their tax income.

Second, some countries may insist on global solutions, rather than unilateral EU action. The OECD is expected to publish a progress report on its work to address the tax challenges of the digital economy in April 2018, with the final report anticipated for 2020. France and the other three member states are calling for immediate term solutions, whilst the Estonian Presidency warns against “quick fixes”. Instead, it calls for longer term structural changes to the international tax system, such as establishing the concept of a ‘virtual permanent establishment’.

Having said that, it appears that a number of member states currently in favour of OECD action are willing to consider backing unilateral EU action, should the OECD fail to progress in a timely and constructive manner. It remains to be seen how long these countries’ patience with the OECD will last.

Third, companies that are active in the digital sector are of a different nature, and hence taxing them on the basis of a uniform turnover tax risks not being effective. As pointed out by EU Observer, Apple is already taxed on its shops and sales, whilst Facebook has no activities in the real economy.

The European Commission, for its part, will take the opportunity to assess the ‘feeling in the room’ before committing to any particular course of action. The Commission has already committed to coming up with a legislative proposal in 2018. As a first step, it will publish a Communication on digital taxation by the end of this month (see article above in the ‘European Commission’ section).

**ECOFIN discussion outcome: 10 member states back equalisation tax, divisions in the horizon**

The discussion on 16 September marked a first serious exchange of views on the topic at the EU-level. As a result, Romania, Bulgaria, Slovenia, Greece, Portugal and Austria joined the four initiating member states in support of the equalisation tax on digital companies’ turnover.

This proposal – seen as a short-term fix – does not enjoy unanimous support. At the informal ECOFIN, some reservations were raised by at least Luxembourg, Malta, Ireland, the UK, Denmark, Sweden and the Czech Republic. According to Estonia, over 20 member states have backed its proposal to tax digital companies’ profits where they are made, rather than where they have been registered.

Estonian representatives insist, however, that the two proposals on the table (taxing turnover or profits) are not mutually exclusive and, rather, complement each other. Estonia has, moreover, reiterated its call for establishing the notion of a ‘digital permanent establishment’.

The EU Ministers will aim to agree on a common approach by December. The ultimate objective is to devise a unified EU front in the OECD and harness support for a prospective EU proposal.

**Court of Justice of the EU – Rulings**

**Withholding tax on dividends paid abroad – 7 September**

CJ EU has issued a ruling on withholding taxes on dividends paid abroad. The case code is C-6/16.

In its ruling, the CJ EU clarifies the conditions under which authorities may refuse to grant an exemption from the withholding of tax on dividends. The Court found that the French authorities have taken disproportionate measures by refusing the exemption to a French subsidiary that paid dividends to its parent company located in Luxembourg.
but indirectly controlled by another company established in Switzerland. Under the current French rules, the parent company would have to prove that it does not intend to abuse the exemption – a requirement that the Court found disproportionate.

**Taxation of interest from financial instruments – 12 September**

CJ EU has issued a ruling on taxes on interest deriving from financial instruments. The case code is C-648/15.

In its ruling, the Court settled a dispute between Austria and Germany in the former's favour. The ruling clarifies the concept of ‘debt-claims with participation in profits’ in a double tax convention between the two countries, from August 2000. The case involved a double taxation dispute whereby both countries claimed the right to tax interest received by the Bank of Austria.

**Deduction of input tax – 14 September**

CJ EU has issued a ruling on input tax deductions. The case code is C-132/16.

In its ruling, the Court establishes that a taxable person may deduct input VAT from construction or property improvement services provided to a third party, if this third party enjoys the results of the services free of charge and are used both by the taxable person and the third party for their economic activity. The condition is that those services should not exceed what is necessary to allow that taxable person to carry out the taxable output transactions and where their cost is included in the price of those transactions.

**Tax on gains in value of assets held in trust – 14 September**

CJ EU has issued a ruling concerning the taxation of value gains from assets held in trusts. The case code is C-646/15.

In the ruling, the Court clarifies the tax rules governing situations under which trustees are treated under national law as a single and continuing body of persons, distinct from the persons who may from time to time be the trustees. Under such circumstances, it is not permissible to provide for the taxation of unrealised gains in value of assets held in trust when the majority of the trustees transfer their residence to another Member State, whilst failing to permit the deferral the tax payment.

**Refusal to grant the tax credit to shareholders – 14 September**

CJ EU has issued a ruling concerning the refusal to grant tax credit to shareholders. The case code is C-628/15. In its ruling, the Court clarifies the circumstances under which rights should be conferred on a shareholder receiving dividends treated as ‘foreign income dividends’.
Switzerland opens a public consultation on tax reforms – 6 September

The Swiss Federal Council has opened a consultation on prospective reforms of the country’s tax code.

The tax reform proposal contains a number of key measures, ranging from abolishing reduced taxes for cantonal status companies to the mandatory introductory of patent boxes for cantons. Stakeholders have until 6 December to respond to the consultation.

BRICS make commitments on tax – 7 September

Brazil, Russia, India, China and South-Africa (BRICS) have committed to assisting each other as well as developing countries to fight against tax evasion and avoidance. The commitment was made in the aftermath of the annual BRICS Summit that took place in Xiamen, China.

In the Summit’s communiqué, the BRICS leaders state the following:

“We reaffirm our commitment to achieving a fair and modern global tax system and promoting a more equitable, pro-growth, and efficient international tax environment, including to deepening cooperation on addressing base erosion and profit shifting (BEPS), promoting exchange of tax information, and improving capacity-building in developing countries. (...) We will strengthen BRICS tax cooperation to increase BRICS contribution to setting international tax rules and provide, according to each country’s priorities, effective and sustainable technical assistance to other developing countries”.

“Sweden To Reduce Tax For Start-Ups” – 13 September

The Swedish government has committed to reducing the tax burden on start-ups in an effort to encourage entrepreneurship. Under the reform proposals, companies hiring their first employee will benefit from a lower tax burden, and more simplified tax rules will apply to remuneration in the form of stock options.

“Ireland Considers Future Shape Of Corporate Taxation” – 13 September

According to a recent review of the Irish corporate tax system, a major overhaul of the rules is in place. The report is concerned, in particular, by the Irish tax system’s over-reliance on corporate tax yields.

The report recommends, notably, to move to a territorial corporate tax base in respect to the income of foreign branches of Irish resident companies and, in respect of connected companies, the payment of foreign-source dividends. Moreover, the Irish government should, according to the report, extend transfer pricing rules to SMEs as well.

Trump argues his tax reform will not favour the rich, Paul Ryan promises tax plan this month – 13/14 September

President Trump has argued that his planned tax reforms – including the reduction of the corporate tax rate to 15% - will not favour the wealthy. Paul Ryan, for his part, has committed to revealing further details on the tax
reform bill by the end of September. Ryan re-iterated his desire for the bill to be signed into law by the end of the year, so that the reforms can enter into force in 2018.

As a reminder, the White House and the Congress Republicans reached a broad agreement on the reform’s outlines in late-July (for further details, please refer to the Tax Policy Update from 18 August). As part of the compromise, the two institutions agreed that the Congress Republicans would draft the bill.

**OECD**

**Cambodia, Greenland, Haiti and Madagascar join the fight against tax evasion – 5 September**

Cambodia, Greenland, Haiti and Madagascar have signed up to the Global Forum on Transparency and Exchange of Information for Tax Purposes. This raises the number of signatory jurisdictions to 146. The Global Forum's aim is to ensure that all jurisdictions adhere to the same standards of international co-operation in tax matters.

**OECD releases further guidance on Country-by-Country reporting (BEPS Action 13) – 6 September**

The OECD's Inclusive Framework on BEPS has released two sets of guidance to give greater certainty to tax administrations and MNE Groups alike on the implementation and operation of CBCR (BEPS Action 13).

On the one hand, the existing guidance has been updated to include additional issues – including the definition of revenues and the treatment of MNE groups with a short accounting period. On the other hand, new guidance was published on the appropriate use of the information contained in CBC Reports.


The report provides comparative information on tax reforms that were implemented, legislated or announced in 2016 in all 35 OECD countries, as well as in Argentina and South Africa. It concludes that countries have continued the trend towards implementing tax policy reforms as part of wider strategies to boost growth, with an increasing focus on reducing inequalities and driving behavioural change.

The report, published annually, tracks reforms to personal income tax, social security contributions, corporate income tax, VAT/GST, excise duties, environmental taxes and property taxes across countries. It also tracks key tax policy trends in these regions over time.
**Other News**

“Proper carbon tax could wipe billions from polluters' profits” – 4 September

A recent analysis conducted by Schroders argues that up to $1.5 trillion in global company profits could be wiped due to taxes resulting from adhering to the Paris Climate Agreement's conditions. Consequently, Schroders calls on investors to focus on picking companies that could survive in a low-carbon economy, rather than companies in construction, steel and commodity chemicals sectors where profits could decrease by as much as 80%.

**UEAPME: SMEs can profit from a common corporate tax base – 8 September**

UEAPME, the Brussels-based organisation representing European SMEs, has stated that a common tax base would significantly reduce the compliance costs for SMEs doing cross-border business in the EU.

Furthermore, UEAPME argues that if such a common base becomes mandatory for large multinationals, it would reduce their tax avoidance opportunities, thereby levelling the playing field between large companies and SMEs. The organisation points to the “considerably higher” effective tax rates faced by SMEs, in comparison to multinationals.

**NBER publishes report on the use of Tax Havens Globally – 13 September**

The National Bureau of Economic Research (NBER) has published a new report identifying trends in the use of “tax havens” from across the globe.

The paper estimates, in particular, the amount of household wealth owned by each country in offshore tax havens. The equivalent of 10% of world GDP is held in tax havens globally, but there are differences between regions. Whilst in Scandinavia, only a few percent of GDP is held in tax havens, the amount raises to about 15% in continental Europe, all the way to 60% in Gulf countries and some Latin American economies.

The report maintains that since offshore wealth is very concentrated at the top, accounting for it increases the top 0.01% wealth share substantially in Europe, even in countries that do not use tax havens extensively. This has considerable effects in Russia, where the vast majority of wealth at the top is held offshore.

**Report by MEP Paul Tang: EU Tax Revenue Loss from Google and Facebook – 15 September**

A new report published by the MEP Paul Tang (S&D/NLD) assesses tax revenue losses in the EU arising from the tax practices of Google and Facebook.

The report observes that as the business environment has become more globalized and digital, while corporate income is taxed at the national level, digital companies such as Google and Facebook are incentivised to engage in international tax avoidance. The report calls for Europe to take the lead with a “modern framework” for corporate taxation. It reflects on why tax reform is needed, and proposes solutions to taxing large digital platforms.
**MEP Questions & Answers**

**Work on financial transactions tax comes to halt – 29 August**

The European Commission has replied to a question asked by the MEP Hugues Bayet (S&D/BEL) with regard to the FTT.

In his question, Mr. Bayet asks the Commission what it intends to do to the current stalemate in the FTT negotiations. In his reply, Commissioner Moscovici maintains that a lot of progress has already been achieved in the FTT negotiations. The Commission remains committed to providing technical assistance to the negotiations.

**List of tax havens – 30 August**

The European Commission has replied to a question asked by the MEP Hugues Bayet (S&D/BEL) with regard to the upcoming EU list of “tax havens”.

In his question, Mr. Bayet asks the Commission what is the point of excluding EU member states from the ongoing drafting of a common EU-list of non-cooperative jurisdictions, given that many of the member states offer advantageous tax regimes to multinationals.

In his reply, Commissioner Moscovici reminds that the objective of the common EU list is to address external factors leading to the erosion of Member States' tax bases. It also aims to promote good governance issues by asking third country jurisdiction to apply the same standards EU member states have already committed to.

**Public country-by-country reporting for all tax jurisdictions – 30 August**

The European Commission has replied to a question asked by the MEP Emmanuel Maurel (S&D/FRA) with regard to public CBCR.

In his question, Mr. Maurel asks the Commission whether it is ready to support European Parliament's call for public CBCR to be extended to all jurisdictions. Currently, the Commission proposal only asks for CBC reporting for EU member states, as well as third jurisdictions falling within the upcoming EU list of non-cooperative jurisdictions.

In his reply, Vice-President Dombrovskis does not directly answer the question but states that the Commission proposal aims to avoid potential double-taxation and tax disputes from arising. Moreover, he re-iterates the Commission's commitment to act as a neutral broker in potential future negotiations between the European Parliament and the Council on the file.

**Opacity in financial transactions, money laundering and tax evasion in the European Union – 6 September**

The European Commission has replied to a question asked by the MEPs Kostas Chrysogonos (GUE-NGL/GRE) and Stelios Kouloglou (GUE-NGL/GRE) with regard to the opacity of financial transactions, money laundering and tax evasion in the EU.

In their question, the two MEPs refer to figures according to which up to 10% of Europe's wealth is located in offshore jurisdictions. Moreover, they refer to the Big Four accounting firms for their supposed major role in facilitating tax evasion. The MEPs ask the Commission what it will do to address the issue.

In his reply, Commissioner Moscovici lists a number of transparency measures already undertaken by the Commission to improve the status quo. This includes the recently proposed amendment to the Directive on
Administrative Cooperation, which would oblige tax intermediaries to disclose information about tax planning arrangements to tax authorities.

**The problem of corporation tax inequality in the EU – 7 September**

The European Commission has replied to a question asked by the MEP Dubravka Šuica (EPP/CRO) with regard to corporate tax inequality in the EU.

In her question, Ms. Šuica asks the Commission for its views on the different corporate tax rates across the EU, and seeks for a reasonable middle-ground between 0% and 34% corporate tax rates. She sees both as problematic. In his reply, Commissioner Moscovici refers to the myriad of tax reforms undertaken at the EU-level in the past couple of years and which will, in his view, level the playing field between companies. He sees the CCCTB as the ultimate solution to the issue altogether.

**Events**

- 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](#)