

Tax

2 -13 October

HIGHLIGHTS

- European Commission: Commission proposes first steps of major VAT overhaul – 4 October
- Council: ECOFIN – Council approves tax dispute resolution proposal, discusses VAT proposal and digital tax – 10 October
- European Parliament: PANA Committee hearing on amendments, Accountancy Europe mentioned during the debate – 12 October
- State aid: Commission finds Luxembourg granted Amazon illegal state aid, challenges Ireland in court – 12 October

European Commission

Commission proposes first steps of major VAT overhaul – 4 October

The Commission has published its first VAT package of this autumn. The VAT package has three fundamental objectives:

- Take first steps towards the definitive regime characterised by the destination principle
- Introduce a number of “quick fixes” for the period leading up to more fundamental reforms
- Establish the concept of a Certified Taxable Person (CTP) to underpin the above two

The VAT package consists of four documents, namely, the following:

- [Communication](#) outlining the next steps of EU VAT reform
- [Amendments](#) to the VAT Directive to introduce the definitive system for taxing trade between member states, the concept of a CTP as well as three “quick fixes”
- [Amendments](#) to Implementing Regulation No 282/2011 in order to introduce a fourth “quick fix”, which harmonises and simplifies rules on the proof of the intra-Community transport of goods, with the view of exempting an intra-Community supply of goods from VAT

- [Amendments](#) to VAT Regulation on Administrative Cooperation in order to introduce the CTP concept to the electronic EU VAT-number verification system (VIES)

“FUNDAMENTAL PRINCIPLES” OF THE DEFINITIVE REGIME

The amendments introduce the following underpinning principles to establish the base for a future definitive regime:

- The principle of taxation at destination for intra-EU cross-border supplies of goods – the VAT rate of the Member State of destination applies on the goods
- The confirmation that the vendor is liable in the case of an intra-EU supply of goods as a general rule, and is thus responsible for charging and collecting the VAT
 - However, if the buyer is a CTP, this taxable person will be liable for payment of the VAT due directly to the treasury of the Member State of destination
- Extending the One Stop Shop (OSS). Businesses will be able to make declarations, payments and deductions for cross-border supplies of goods through a single online portal, as is already the case for the supply of e-services (MOSS)

“QUICK FIXES” to address immediate challenges

Recognising that a fundamental reform of the EU VAT system will take its time, the Commission proposes at the request of member states the following “quick fixes”:

- Simplification of VAT rules for “call-off stock arrangements”, in which companies move goods from one member state to another to be stored before being supplied to a customer known in advance. The simplification is limited only to CTPs
- Simplification for chain transaction situations identifying the supply with which the intra-Community transport of goods should be linked. The simplification is limited only to CTPs
- Simplification of the proof of transport of goods between two Member States needed for the application of the exemption to intra-Community supplies. The simplification is limited only to CTPs
 - Clarification that, in addition to the proof of transport, the VAT number of the commercial partners recorded in the electronic EU VAT-number verification system (VIES) is required in order to apply the cross-border VAT exemption under the current rules

The concept of a CTP

A business will be able to apply to its national tax authority to become a CTP, granting it a EU-wide recognition as a reliable taxpayer. Both the CTP as well as companies that conduct business with it will enjoy simplified procedures for the declaration and payment of cross-border VAT. For example, a supplier is allowed to apply the reverse charge mechanism for intra-Union supply performed for a CTP.

In order to become a CTP, the business needs to prove compliance with pre-defined criteria, including:

- Regular payment of taxes
- Appropriate internal controls
- Proof of solvency

Next steps and future VAT initiatives

As always, the member states will have to reach unanimous agreement on the proposed amendments. The European Parliament will only provide its non-binding opinion. This process will take several months at the very least, and the negotiations in the Council will last all the way to 2018.

Moreover, a number of additional policy initiatives are to be expected, namely the following:

- 29/11: second VAT package
 - Reform of VAT rates policy, to provide member states greater leeway in setting their national rates
 - VAT simplification package for SMEs. This will consist, mainly, of adapting the existing SME special scheme to a destination-based VAT system. The aim is to ensure equal treatment of SMEs regardless of where they are established in the EU and to encourage them to engage in cross-border activities
 - Legislative proposal to reinforce existing instruments for administrative cooperation
 - One of the objectives will be to strengthen member states' capacity to conduct faster joint risk analysis of available information within Eurofisc, launch follow-up actions and share VAT intelligence with law enforcement bodies at EU level
- End-2017: package of two non-legislative reports that will shed light on the tax collection challenges of tax administrations:
 - Report on the procedures applied in member states for registering taxable persons, determining and collecting VAT, as well as on the modalities and results of their VAT control systems
 - Report on the use of mutual assistance between member states for the recovery of taxes (especially VAT) that are not paid voluntarily by the taxable persons
- 2018: a proposal to establish the detailed technical provisions of the definitive regime, including specific provisions for the implementation of relevant legal cornerstones

Commission publishes infringements package for October – 4 October

The European Commission has published its monthly infringements [package](#), covering October. The package includes several tax-related infringements.

Notably, the Commission asks **Germany** to align its VAT refund system with EU rules. Under the German system, a taxable person established in Germany that applies for a VAT refund from another member state via a German web portal can lose the right to a refund. The Commission deems this to be in violation of relevant EU provisions, and calls on Germany to act within two months.

Also on VAT, the Commission calls on **Hungary** to amend its national rules under which companies must provide the Hungarian tax authorities for VAT purposes with detailed information on certain business-owned transport that use public roads. The Commission maintains that this requirement primarily affects cross-border EU transactions and introduces administrative formalities connected with the crossing of borders. It is, therefore, in breach of the VAT Directive. As with Germany, Hungary now has two months to take action.

Finally, the Commission has sent a reasoned opinion to Belgium for infringing EU rules on the taxation of interest income from bonds. Under the Belgian rules, the treatment of interest on fixed income bonds differ depending on

whether the interest comes from Belgian or foreign origin bonds. The Commission argues that this difference constitutes an obstacle to the free cross-border movement of capital.

The Commission rules out tax on plastic products – 6 October

As [reported](#) notably by the Guardian, the European Commission has ruled out the prospect of a EU tax on one-time used plastic products. Instead, the Commission prefers to raise consumer awareness on the environmentally harmful impacts of such products.

European Parliament

ECON Committee votes on VAT reports – 10 October

The ECON Committee has voted on its two VAT reports:

- [administrative](#) cooperation and combating fraud in the area of VAT, led by the MEP **Ludek Niedermayer (EPP/CZE)**
- [certain](#) obligations for supplies of services and distance sales of goods (e-commerce), led by the MEP **Cătălin Sorin Ivan (S&D/ROM)**

The report on administrative cooperation was adopted by 53 votes in favour and one against. The only issue in the Parliament was the date of entry into force of the proposal. S&D wanted the date to be earlier, in 2019, from the initial 2021 proposed by the Commission. However, the final Parliament reports maintains 2021.

The report on e-commerce, in turn, was adopted by 47 votes in favour, one against and six abstentions. Here the main stumbling block constituted the thresholds. In the initial Commission proposal, companies with annual cross-border sales below **€100,000 would be eligible for more simple procedures for determining their clients' place of residence**. Moreover, businesses with cross-border sales below **€10,000** may apply the VAT rules of their country of origin. These provisions would be applicable from 2018 in the case of e-services, and from 2021 for online sales of goods.

ALDE – supported by ECR – called for raising the **€10,000** threshold to **€35,000**. The Greens-EFA Group, in turn, wanted to increase this threshold to **€100,000**, whilst proposing to decrease the Commission's proposed **€100,000** threshold to **€35,000**. **ALDE's proposal won the day**. Moreover, the ECON MEPs have included an obligation for online platforms (e.g. Amazon, eBay) to be liable for VAT when there is a risk that third-country based suppliers would not pay it.

As always on tax files, the European Parliament may only submit its non-binding opinion, whilst member states must **decide unanimously**. The member states or the Commission do not have to take the Parliament's opinion into account.

ECON hearing with national parliaments on C(C)CTB, digital taxation on the menu – 10 October

ECON Committee has held a public [hearing](#) on CCCTB and CCTB with representatives from national parliaments. The hearing demonstrated that national parliaments are divided on the proposals, with strong criticism of the

proposals stemming especially from Ireland, Malta, Cyprus and the Czech Republic. Several national representatives as well as MEPs were also supportive of initiatives to address the taxation of the digital economy.

Highlights from MEPs

Ludek Niedermayer (EPP/CZE) opened the hearing by emphasising that taxation of the digital economy should be discussed and addressed as part of the CCCTB. **Paul Tang (S&D/NLD)** also stressed the digital tax dimension, the need to define ‘digital presence’, and overall highlighted CCCTB’s potential to address ‘aggressive tax planning’ by multinationals. Moreover, he expressed support for the French initiative to tax the turnover of digital companies. The EU and US cannot agree on digital taxation, and therefore Europe must take the lead. Finally, if the CCCTB is introduced, different accounting standards may become the “next game in town”.

Alain Lamassoure (EPP/FRA) echoed these sentiments, maintaining that digital companies should be subject to the same tax rules as conventional ones. Digital turnover should be determined, appropriate impact assessments conducted and any member state that risks losing out should be granted appropriate compensation. **Evelyn Regner (S&D/AUT)** also called for establishing a definition for ‘digital permanent establishment’, and called for reducing the mandatory CCCTB threshold from the current EUR 750 million to EUR 40 million.

Views from members of national parliaments

A representative from the Irish parliament criticised CCCTB’s allocation formula for being “arbitrary”, expressed fears that **Ireland’s** tax base would suffer from the system, and emphasised that taxation is a question of national sovereignty. A Cypriot member of the national parliament echoed these sentiments, fearing the potentially negative impact that CCCTB could have on the country’s tax base. He maintained that OECD BEPS and the EU’s own Anti-Tax Avoidance Directive (ATAD) should be sufficient to address dubious tax practices of multinationals.

Comments from other members of national parliaments included the following:

- **Poland:** saw danger in the consolidation-aspect, whilst a Czech deputy accused France and Germany for using CCCTB as a protective tool for their domestic markets. The formula apportionment is, arguably, not favouring dynamic, pro-growth economies.
- **Romania:** the representative would support the two-step approach. On taxing the digital economy, he welcomed the proposals to include it. Romania has concerns about the second stage due to its potential impact on national budgets. He asked how the compensation fund would work in practice
- **Finland:** questioned whether the apportionment formula is correct, and welcomed the idea of including digital taxation. There should be more discussion on whether having two co-existing tax systems (CCCTB and national ones) could create an administrative burden
- **Denmark:** Denmark risks losing from the proposal, but the compensation mechanism means that her country could support it. The representative also argued that there is no real sovereignty in the taxation of large multinationals. Finally, Denmark may have issues with the super deduction and on the tax base itself
- **Greece:** the representative called for a common set of rules on a corporate tax base. He is in favour of the proposed EUR 750 million threshold for the CCCTB, and the super deduction for R&D. He also called for addressing the low tax payments by digital companies
- **Italy:** a common tax base does not mean that member states will not have control over their tax rates. Under the CCCTB, profits would be taxed where they are made. He also noted that many companies actually support the CCCTB as it would reduce compliance costs
- **Portugal:** CCCTB respects subsidiarity as the objective could not be achieved on a national level. He supported the proposal, although the EUR 750 million threshold is too high. A full fiscal impact assessment

should be conducted to discover how much certain member states may lose. This will make it easier to find an agreement on the compensation fund

- **Austria:** minimum tax rates or a tax corridor should be introduced (i.e. minimum and maximum tax rates). On subsidiarity, he argued that taxation of multinationals can best be addressed at the EU level

PANA Committee hearing on amendments, Accountancy Europe mentioned during the debate – 12 October

PANA Committee has held a [public hearing](#) to discuss the amendments and, in particular, the cross-political Group compromise amendments. The hearing gave some insight as to the direction to which the compromise amendments might be steered.

Several MEPs criticised the Council's Code of Conduct Group on business taxation, accusing it of being dysfunctional due to its unanimity-based decision-making. Moreover, several representatives emphasised the need to clearly distinguish illegal activities (tax evasion, money laundering) from (formally) legal ones, such as tax avoidance. These MEPs stressed that both require different approaches – the latter changes to legislation, the former some changes as well as better enforcement.

At the beginning of the hearing, the Committee Chair **Werner Langen (EPP/GER)** stated that the Groups have now agreed on the broad principles of all outstanding issues, and that the vote will still take place on 18 October, as initially scheduled. He mentioned, moreover, that the Committee would discuss in its November meeting possible follow-up to its work.

Accountancy Europe under the spotlight

Of particular interest, the far-Left MEP **Fabio De Masi (GUE-NGL/GER)** mentioned that Accountancy Europe has been “lobbying actively” the Committee's work, and spoken out against certain amendments tabled by his GUE-NGL and the S&D Groups. According to De Masi, this demonstrates that the Committee has been successful in stepping onto the toes of the accountancy profession.

De Masi also referred to a report commissioned by the GUE-NGL Group and prepared by **Richard Murphy** which calls, amongst other things, for a strict separation of audit and non-audit services by the same firms. For further details on the Murphy report, please see [Tax Policy Update](#) from 7 July.

Indeed, Accountancy Europe sent a [letter](#) to the Committee Chair and the rapporteurs, expressing concerns about specific amendments calling for re-opening the Audit Directive and pointing to potential perceived conflicts of interest in accountancy firms. Accountancy Europe has been happy to assist the Committee's work, for example through the participation of its CEO **Olivier-Boutellis Taft** and manager **Paul Gisby** at a hearing on 6 March. Accountancy Europe is committed to inform the debate, and is glad to see that its input has contributed to the discussions at the Committee.

Other highlights – conflicts of interest in firms, self-regulation of professions

Evelyn Regner (S&D/AUT) stated that the Committee should also focus on monitoring the implementation of existing legislation, instead of enacting new ones to address all of the issues identified by the Committee. She also mentioned that without the help of accountants, auditors and lawyers the scale of dubious tax practices as demonstrated by the Panama Papers would not have been possible.

Pirkko Ruohonen-Lerner (ECR/FIN) argued that the PANA Committee's work should be extended and possibly rendered permanent. Other matters will need to be looked into in the future, for example the “problematic role” of

the Big Four audit firms. In her view, the same firm providing both audit and tax advisory services is not sustainable. Finally, the MEPs should look into how tax planning fits with companies' CSR strategies.

Molly Scott Cato (Greens-EFA/UK), for her part, emphasised that countries need to put an end to self-regulation of professions and replace it by “stronger” codes of conduct, state-mandated regulation and licensing for accountants and lawyers. However, the Committee Chair, Dr. Langen, referred to these proposals as unrealistic.

Council

VAT derogation to the Netherlands published – 3 October

A new proposed [VAT derogation](#), this time for the **Netherlands**, has been published.

The derogation would authorise the Netherlands to designate the recipient of the supply as the person liable to pay VAT to the tax authorities in the case of supplies of telecommunication services – effectively applying the reverse charge mechanism in such cases. The derogation will have to be approved by all member states, but for the time being no objections are to be expected.

ECOFIN: Council approves tax dispute resolution proposal, discusses VAT proposal and digital tax – 10 October

The October ECOFIN saw the member states accepting the Commission's proposal for tax dispute resolution, providing early feedback on the Commission's recent VAT proposals (see article in the Commission-section) and a presentation from the Commission on its alternative approaches to taxing the digital economy.

Dispute resolution

With regard to tax dispute resolution, member states formally adopted the Commission's proposed [Directive](#) with certain amendments. Notably, the Directive introduces a so-called mutual agreement procedure (MAP), stemming from a complaint by a taxpayer.

Under the MAP, member states will be able to cooperate freely, with the objective of finding a solution within two years' time. If MAP fails, the case will move to the actual dispute resolution procedure under which the involved national competent authorities will seek a binding final decision. Should member states fail to reach an agreement within 15 months, the Directive introduces an automatic arbitration procedure.

VAT reform

On VAT, **Commissioner Moscovici** presented the Commission's VAT package, its main features and proposed reforms. The presentation sparked two interventions – from **Spain** and **France**.

The Spanish minister of economy, **Luis de Guindos Jurado**, welcomed the proposal and agrees with the destination principle as well as the OSS. However, some fine-tuning will be necessary – in particular since the new system will

require additional cooperation between tax authorities. The minister also emphasised that any simplifications should not undermine the fight against VAT fraud.

For his part, the French finance minister **Bruno Le Maire** thanked the Commission and gave his full support to the proposals. The minister also highlighted that despite being a heavily technical agenda, the VAT reform will put political choices on the table as well.

Taxation of the digital economy

Finally, on taxing the digital economy the Commission presented its recently published Communication. The Communication sets out the challenges and outlines possible solutions, and supports a fundamental reform of international tax rules. For further details on the Communication, please refer to the [Tax Policy Update](#) from 29 September.

The OECD is expected to issue a report to the G20 on the taxation of the digital economy in spring 2018. The Commission also envisages a legislative proposal for spring 2018, ideally to implement solutions suggested by the OECD. However, in the absence of progress at international level, the Commission proposed for the EU to move forward with “necessary solutions” at EU level.

The Estonian Presidency intends to prepare conclusions for the Council's meeting on 5 December 2017. These will act as the EU's contribution to discussions at the international level and form a reference for further work at EU level.

Court of Justice of the EU – Rulings

C-73/16: Fight against tax fraud, rules on the lawfulness of the processing of personal data – 27 September

The Second Chamber of the CJEU has [ruled](#), notably, that **personal data may be processed by member states' authorities** for the purpose of tax collection and fighting against tax fraud by drawing up a list of persons without the consent of the data subjects. However, the condition is that the authorities in question are invested by the national legislation with tasks carried out in the public interest, that the drawing-up of that list and the inclusion on it of the names of the data subjects in fact be adequate and necessary for the attainment of the objectives pursued, and that there be sufficient indications to assume that the data subjects are rightly included in that list.

Case C-273/16: conditions of VAT exemption for ancillary services – 4 October

The First Chamber of the CJEU has [ruled](#) national legislation may not require that in the case of applying for a VAT exemption for ancillary services, the value of these services is included in the taxable amount or that VAT has been charged on those services at the customs stage.

C-164/16: VAT leasing contracts – 4 October

The First Chamber of the CJEU has [clarified](#) the wording of the VAT Directive Article 14(2)(b) which states that ‘contract for hire which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment’. The Court states that the wording also applies to a leasing contract with an option to purchase, on the condition that the financial terms of the contract imply that exercising the option appears to be

the only economically rational choice that the lessee will be able to make at the appropriate time if the contract in question is performed for its full term.

C-262/16: Common flat-rate scheme for farmers – 12 October

The Third Chamber of the CJEU has [ruled](#) that the VAT Directive lays down exhaustively enough all the cases in which member states may exclude a farmer from the common flat-rate scheme for farmers. Moreover, farmers who are found to be recovering substantially more as members of the common flat-rate scheme for farmers than they would if they were subject to normal or simplified VAT arrangements do not constitute ‘farmers’ in the meaning of VAT Directive’s Article 296(2).

C-404/16: ‘CANCELLATION’ AND ‘REFUSAL’ under a financial leasing agreement – 12 October

The Sixth Chamber of the CJEU has [clarified](#) that the concepts of ‘cancellation’ and ‘refusal in Article 90(1) of the VAT Directive include situations in which the lessor under a financial leasing agreement with definite transfer of ownership can no longer claim payment of the leasing instalment from the lessee when the lessor has terminated the agreement due to a breach of contract by said lessee. Moreover, if a financial leasing agreement has been definitely terminated due to a non-payment of lease instalments by the lessee, the lessor may deduct the amount for VAT. This applies even in situations where the applicable national law considers it to be a non-payment situation as defined in Article 90(2) of the VAT Directive, and thus does not allow the taxable amount to be reduced.

International

France plans tax cuts in 2018 – 28 September

The 2018 French [budget](#) will see an EUR 10 billion drop as a result of tax cuts.

The budget includes reductions in corporate tax, changes to social security contributions, a tax cut for certain finance sector workers, as well as increases in environmental taxes and the elimination of the housing tax. With regard to the corporate tax specifically, the current headline rate of 33,3% will be reduced to 28% on income up to EUR 500,000 and from 2019 onwards to 31% for income above EUR 500,000. The ultimate objective is a 25% corporate tax rate by 2022.

“INDIA EXPORTERS STRUGGLE WITH MODI’S NEW TAX SYSTEM” – 2 October

As [reported](#) in the Financial Times (article only available to subscribers), up to 40,000 companies may face a funding crisis as a result of the recent tax reforms in **India**, and in particular the introduction of a GST.

The government has delayed GST credits to exporters in a bid to increase tax revenue, with ensuing damaging impact on their finances. Under the previous system, export businesses did not have to pay tax at all, whilst now they have to pay the tax and claim it back afterwards.

“Ebay paid £1.6m in UK tax while reporting \$1.3bn in revenue” – 11 October

According to the Financial Times (article only available to subscribers), Ebay UK only [paid](#) 1,6 million pounds in taxes last year, despite seeing an 8% increase in revenues, amounting to a total of 200 million pounds. However, the annual report of Ebay US stated that Ebay UK’s revenues amounted to \$1,6 billion.

Irel and changes international tax strategy – 10 October

Ireland has [published](#) an updated version of its International Tax Strategy. The Strategy provides an overview of the steps and measures undertaken to adhere to international standards, and clarifies the government's position on key global reforms.

In the Strategy, Ireland re-affirms its commitment to tax certainty, stability and a “sustainable” corporate tax system. Moreover, Ireland remains committed to the OECD BEPS project, and is supportive of EU-level measures for tax intermediaries as long as these are in line with BEPS recommendations. Ireland also states that its priority for 2017 is the finalization of the common EU list of non-cooperative jurisdictions. On taxation of the digital economy, the Strategy emphasizes that Ireland does not support moving away from the OECD consensus as this would result in double tax and significant uncertainty.

Irel and to introduce tax on sugary drinks – 12 October

Ireland will [apply](#) a special tax on sugar-sweetened drinks from April 2018 onwards. The exact tax rate will depend on the amount of sugar in the product. Pure fruit juices with no added sugars will not be subject to the new tax due to their other health benefits. The government is hoping to collect an additional EUR 40 million in tax revenue per annum.

Dutch coalition formed, agreement on tax reforms – 12 October

The negotiating parties have reached a coalition agreement to form a government in **the Netherlands**. The main corporate tax rate of 25% will be lowered to 21%, and the current 20% rate for profits up to EUR 200 million will drop to 16%.

The agreement also re-iterates the country's commitment to the OECD BEPS project, and announces limitations to the deduction of interest payments in a bid to encourage equity financing. Furthermore, environmental taxes will be increased.

OECD

Public comments received on BEPS discussion drafts on attribution of profits to permanent establishments and transactional profit splits – 6 October

The OECD has published its received stakeholder comments to the consultations on the [attribution](#) of profits to permanent establishments as well as on revised guidance for split payments ([part 1](#) and [part 2](#)). In terms of next steps, the OECD will organise a public consultation on the two discussion drafts on 6-7 November 2017 in Paris.

Speakers and other participants at the public consultation will be selected from among those providing timely written comments on the discussion drafts.

OECD publishes report on countries' progress with BEPS Action 5 on harmful tax practices – 16 October

The OECD has published a progress [report](#) that demonstrates how governments have dismantled, or are in the process of amending, nearly 100 preferential tax regimes as part of the OECD BEPS Action 5 standards to improve the international tax framework.

One part of the Action 5 minimum standard relates to preferential tax regimes where a peer review is undertaken to identify features of such regimes that can facilitate BEPS, and therefore have the potential to unfairly impact the tax base of other jurisdictions. This progress report is an update to the 2015 BEPS Action 5 report and contains the results of the review of all Inclusive Framework members' preferential tax regimes that have been identified.

The report also contains guidance on:

- preferential tax regimes, including timelines for amending regimes
- how certain features of preferential regimes will be monitored
- the requirement that jurisdictions offering preferential regimes must require substantial activities to be undertaken under their regimes

State Aid

Commission finds Luxembourg gave illegal tax benefits to Amazon worth **AROUND €250 MILLION** – 4 October

The Commission has [ruled](#) that **Luxembourg** granted illegal state aid in the form of unfair tax benefits to Amazon, amounting to EUR 250 million.

The Commission's investigation focused on Amazon's corporate structure, in which an operating company paid annual payments to a holding company for IP. The Commission argues that these payments exceeded, on average, 90% of the operating company's operating profits. They were 1.5 times higher than what the holding company needed to pay to Amazon in the US under a cost-sharing agreement.

The Commission has ordered Luxembourg to recover the amount, but the country is very likely to challenge the decision in court. However, as was the case with Apple Ireland, a prospective court challenge does not remove Luxembourg's obligation to already recover the stated amount.

Commission refers Ireland to Court for failure to recover illegal tax **BENEFITS FROM APPLE WORTH UP TO €13 BILLION** – 4 October

In the same breath, the Commission also [challenged](#) **Ireland** to court for failing to recover EUR 13 billion in tax benefits from Apple.

The deadline for Ireland to implement the Commission's decision on Apple's tax treatment was 3 January 2017. More than one year after the Commission's decision, Ireland has still not recovered any of the illegal aid.

Furthermore, although Ireland has made progress on the calculation of the exact amount of the illegal aid granted to Apple, it is only planning to conclude this work by March 2018 at the earliest.

The Commission maintains that until the state aid is recovered, Apple continues to benefit from an illegal advantage, which is why recovery must happen as quickly as possible. Therefore, the Commission has decided to take the case to the CJEU.

Other News

"New 'territorial' US TAX POLICY WOULD TAX COMPANIES... GLOBALLY? – 28 September

Alexandra Scaggs reflects in her Financial Times [column](#) on the potential meaning and implications of a territorial-based US tax system, as proposed recently by US policy-makers.

As a reminder, the territorial system means that a government only taxes corporate profits earned within its territory. Ms. Scaggs points out, however, that the measure as announced by the US authorities refers to "taxing at a reduced rate and on a global basis the foreign profits of U.S. multinational corporations". She reflects in her column how this could be interpreted as a territorial tax system.

EESC publishes opinion on better tax system for fair competition and growth – 3 October

The European Economic and Social Committee (EESC) continues its focus on tax, with the recent publication of its [opinion](#) on better tax system for fair competition and growth.

In its non-binding opinion, EESC notably calls for greater tax harmonisation, for member states to shift the tax burden from labour to "harmful financial" and environmental practices, to extend the CCCTB across the single market "and beyond", for the introduction of a "tax snake", and the introduction of qualified majority voting in EU's tax decision-making.

Four civil society organisations re-iterate call for public CBCR – 3 October

Eurodad, Oxfam, Transparency International and EPSU have published an updated [document](#) on public CBCR following the outcome of the vote in the European Parliament in July 2017.

In the joint position, the organisations take stock of the European Parliament's **vote outcome**, including its call for public CBCR to cover the whole world, and call for these changes to be introduced into the original Directive itself.

However, the organisations also criticise the Parliament's proposed safeguard clause, which would allow businesses to omit information under certain conditions.

Digital Economy Taxation: A New Counter-Productive EU Initiative? – 13 October

Julien Monsenego, a partner at the multinational law firm **Gowling WLG**, has written an [article](#) in which he reflects on the practical implications and difficulties of a EU initiative to tax digital companies.

He traces many of these difficulties to the international commitments that bind EU member states, as well as contradictions with other global harmonization initiatives. Mr. Monsenego appears to consider the Commission's intention to revise the definition of permanent establishment as part of the CCCTB to be a more cautious approach.

MEP Questions & Answers

Multiple reporting requirements for EU citizens under FATCA and the associated IGAs – 28 September

The European Commission has replied to a question asked by the MEP **Sophia in 't Veld (ALDE/NLD)** with regard to EU citizens' reporting obligations under US FATCA.

In her [question](#), Ms. in 't Veld asks the Commission whether it is aware of the FATCA reporting requirements that EU citizens are subject to, how many EU citizens could be affected, and whether it considers the practice of multiple FATCA reporting requirements in different member states to be in breach of the free movement of people. If so, she asks the Commission how it will address the potential violation of EU citizens' rights.

In his [reply](#), **Commissioner Moscovici** states that the Commission does not monitor or collect information on FATCA implementation, and the bilateral intergovernmental FATA agreements have not deemed to be in breach of EU law. Moreover, since the exchange of financial account information aims at ensuring the correct assessment of tax liabilities in the jurisdiction where an individual is resident for tax purposes, the Commission considers that it is not contrary to the fundamental freedoms.

EU inertia allows Reckitt Benckiser Group to avoid taxes – 29 September

The European Commission has replied to a question asked by the MEP **Miguel Viegas (GUE-NGL/POR)** with regard to Reckitt Benckiser Group's (RB) tax avoidance practices.

In his [question](#), Mr. Viegas refers to an Oxfam report which asserts that RB has been funnelling transactions through regional centres located in tax havens in the Netherlands, Dubai and Singapore. This has granted the company tax savings of over 200 million pounds between 2012 and 2014. He asks the Commission what its view is on RB's tax

practices, and whether it can guarantee that RB could not avoid scrutiny in CBCR by claiming that the information being sought is commercially sensitive (likely reference to the ‘safeguard clause’).

In his [reply](#), **Commissioner Moscovici** re-iterates that the Commission cannot comment on the specific case. Moreover, with regard to the safeguard clause as part of the European Parliament’s position on public CBCR, he cannot comment since this is a matter to be eventually negotiated between the Parliament and the member states.

Internet platforms and taxes – 5 October

The European Commission has replied to a question asked by the MEP **José Blanco López (S&D/SPA)** with regard to internet platforms and taxes.

In his [question](#), Mr. Blanco López asks the Commission what it will do to ensure that internet platforms pay taxes where their profits are generated. In his [reply](#), **Commissioner Moscovici** calls for a common EU position on taxing the digital economy, in order to more effectively influence international decisions on the matter. He re-iterates that within the EU, CCCTB provides “a good basis” to address the challenges of the digital economy.

Taxation of computers above a certain size – 9 October

The European Commission has replied to a question asked by the MEP **Nessa Childers (S&D/IRL)** with regard to the taxation of computers above a certain size.

In her [question](#), Ms. Childers refers to plans by the Irish government to introduce a license fee or tax on PCs, laptops and tablet devices measuring more than 27.94 cm. She asks the Commission such a levy or tax would run contrary to EU law. In his [reply](#), **Commissioner Moscovici** states that it is not clear from her question whether the levy is intended to constitute a fee or a tax, which directly affects the type of legal-conformity analysis to be undertaken. Therefore, the Commission is not in a position to analyse the situation without further clarifications. The Commission invites Ms. Childers to provide more information as to the exact feature of the tax or levy, in order for it to be able to assess whether it is in line with EU law.

Events

- 21/11/2017, **FairTax meets COFFERS: Joint Perspectives on Fair and Sustainable Taxation**, Umea University, Brussels. [Source](#)
- 23-24/11/2017, **Annual Conference on European VAT Law 2017**, ERA, Brussels. [Source](#)