

Tax

16 -27 October

HIGHLIGHTS

- Company law attaches discuss public CBCR in absence of a German government, Estonia eyeing political agreement – 11 October
- PANA Committee votes on draft report and recommendations – 18 October
- EU Summit: member state leaders discuss taxation of the digital economy, France tones down its calls for turnover tax – 19 October
- European Commission publishes Work Programme 2018, S&D calls for EU license for tax advisors – 24 October
- European Commission launches public consultation on taxation of the digital economy – 26 October

European Commission

Commission publishes Work Programme 2018, S&D calls for EU license for tax advisors – 24 October

The European Commission has published its long-awaited Work Programme 2018 (CWP). The CWP sets out the Commission's legislative priorities for the year 2018, and looks further towards 2025 and beyond notably in light of Brexit and the need to recalibrate an EU 27.

The CWP consists of the following documents:

- [CWP 2018](#) – this is the main document of the package
- [List](#) of new initiatives to be proposed
- [List](#) of legislative initiatives under REFIT foreseen for adoption in 2018 – mainly, initiatives aiming to review and improve existing legislation
- [List](#) of pending priority proposals
- Lists of [withdrawals](#) and [repeals](#) – legislative initiatives that have become obsolete or have stalled for too long with no progress in sight

Key tax Measures to be undertaken by May 2018:

New initiatives:

- **Taxation of the digital economy:** legislative proposal establishing EU rules allowing taxation of profits generated by multinationals through the digital economy in Q1 2018 (likely March)
 - The CWP makes reference to taxing profits, rather than turnover as proposed by the French. Moreover, the scope appears to be limited to multinationals. This will probably come in the form of amendments to the CCCTB proposals
- **VAT reform:**
 - Modernised rules for setting VAT rates, 29 November 2017
 - New rules on administrative cooperation between Member States in the field of VAT, 29 November
 - Proposal to simplify the VAT system for SMEs, 29 November
- **Decision-making on tax:**
 - Commission will assess how to make better use of the so-called passerelle clauses. Passerelle clauses enable member states to amend legislative procedures in a targeted manner without the need to revise the EU Treaties. However, this will require unanimity of all member states
 - With clear reference to decision making on taxation, the Commission states that it will seek to move from unanimity to qualified majority voting (QMV) in “certain areas”. President Juncker, in his State of the EU speech, called for more tax decision-making to take place under QMV
 - The Commission will publish a non-legislative Communication on this in Q3 2018

S&D Group calls for EU license for tax advisors

On the day of publishing the CWP, the Commission presented its priorities to the European Parliament Plenary. During this Plenary hearing, **Jeppe Kofod (S&D/DEN)** took the floor to highlight that the PANA investigation has demonstrated how unregulated intermediaries in Europe and tax havens help the rich to hide their wealth.

He maintained that therefore, the S&D Group wants to introduce a common EU license for wealth managers, tax advisors and other intermediaries. These licenses should be instantly revoked throughout the EU in case of illegal actions. Mr. Kofod's intervention demonstrates that the S&D Group is becoming more vocal on the question of tax intermediaries.

Commission launches public consultation on taxation of the digital economy - 26 October

The European Commission has launched a [public consultation](#) on the taxation of the digital economy, ahead of a legislative initiative expected for March 2018.

The consultation aims to define a common EU approach for the taxation of the digital economy, in light of the current political momentum on the topic.

The **deadline for providing comments is 3 January 2018**, i.e. a bit shorter than the usual three months that Commission tends to give for consultations.

The Commission has divided the consultation's questions into two categories:

- More **general questions** that can be replied to by a wider range of stakeholders
- More **specific questions** that require deeper knowledge and understanding of the current international tax system

The consultation also presents different short- and long-term policy solutions that the Commission is considering. Stakeholders may propose additional ones.

Striving for an EU-specific solution

The Commission states that international solutions have, so far, proven inadequate. OECD BEPS Action 1 provides little concrete solutions.

Therefore, the Commission [believes](#) that EU action is needed in order to avoid the danger of unilateral measures. Such unilateral measures may fragment the single market, hamper competitiveness and undermine member states' tax bases. Hence the need to act swiftly.

In parallel, the Estonian Presidency is pushing for member states to agree on common broad principles for taxing the digital economy at the December ECOFIN meeting. The objective is to have a common EU position for OECD-level discussions. The OECD is expected to publish its own recommendations in April 2018.

As readers will recall, the French have been pushing hard for a tax on turnover, although France itself now appears more reluctant to go ahead with this following the government's meetings with the US counterparts and Silicon Valley representatives a few weeks ago (see article below for further details).

Simultaneously, a number of member states are hesitant about unilateral EU action. These are the usual suspects, including Ireland, Malta, Luxembourg, Cyprus etc. As always on tax, unanimity is required.

European Parliament

PANA Committee votes on draft report and recommendations – 18 October

The PANA Committee has voted on its draft [report](#) and [recommendations](#).

The vote led to the adoption of amendments which are critical of the accountancy profession, in particular recommending that:

- The Commission should separate accounting firms and financial or tax service providers
- The Commission should revise the Audit Directive to introduce a rotation of auditors every 7 years and the limitation of the provision of non-audit services “to a minimum”

Conventionally, the Right-wing political Groups enjoy a majority in the Committee. However, the vote was dominated by the Left-wing as a number of conservative and liberal MEPs had to leave the room for other appointments.

In terms of next steps, the report and recommendations will have to be adopted at the European Parliament Plenary. The Plenary vote is scheduled for 12 December 2017. The report may still change during the Plenary vote, subject to whether the centre-Right EPP decides to try to delete some of the amendments adopted in Committee, and whether it can harness sufficient political support for this endeavour.

The PANA report and recommendations are legally non-binding and do not commit the Commission or member states to any particular course of action. However, it can generate political momentum and harness public pressure.

The individual amendments to the draft report ([link 1](#) and [link 2](#)) and the recommendations ([link 1](#) and [link 2](#)) are publicly available.

ECON hearing with Commissioner Moscovici – 19 October

The ECON Committee has held a [public hearing](#) with **Commissioner Moscovici**. During the hearing, the Committee MEPs asked a range of questions related to the Commissioner’s mandate, including on taxation.

Of particular interest, the Commissioner presented and elaborated on his two main priorities for the remaining period of the Commission’s mandate. These include, notably, taking forward proposals on a single VAT area, reforming VAT for e-commerce, and addressing the taxation of the digital economy. The Commissioner also supported a greater role for the European Parliament on tax decision-making, and called on the Council’s Code of Conduct Group to devise an “ambitious list” of non-cooperative jurisdictions by the end of the year.

Tax progress so far

Looking back into the current Commission’s work on tax, Moscovici highlighted that the Commission has so far proposed eleven Directives, six of which have already been adopted. This is an area where it is conventionally thought that nothing can happen at the EU-level due to the unanimity rule in the Council.

The Commissioner also thanked the European Parliament, and in particular the ECON and PANA Committees, for supporting the Commission’s initiatives, and stated that the recommendations in the PANA report echo the Commission’s intended approach to tackle tax avoidance and evasion.

Looking ahead – VAT reform, taxation of the digital economy, reforming EU decision making on tax

On VAT, the Commissioner lamented that the current regime is fragmented and obsolete. Due to the fragmentation, the VAT compliance costs of cross-border businesses are 11% higher than businesses operating at a national level. On top of the already submitted proposals, the Commission will propose in spring 2018 further amendments to the

VAT Directive in order to implement the definitive regime which the Commission aims to have fully operational in 2019.

On taxation of the digital economy, the Commissioner re-confirms the Commission's intention to publish in spring 2018 (probably March) a legislative proposal. The Commissioner believes that this should be done through amending the current CCCTB proposal.

The EU needs to show global leadership on this file. The Commissioner argues that its proposal will be based on OECD's work, although he also expressed his belief that finding an agreement on digital taxation at an international level will be "very difficult". The OECD is expected to publish its own recommendations in April 2018 only.

Finally, the Commissioner emphasised the need for qualified majority voting (QMV) on tax between member states to replace the current unanimity rule, and granting the European Parliament equal legislative powers. Moreover, he would like to deepen the internal market through the tax agenda.

Council

Company law attaches discuss public CBCR in absence of a German government, Estonia eyeing political agreement - 11 October

The company law attaches have held another meeting to continue their technical work on public CBCR.

It appears that the Estonian Presidency is pushing the file very hard, and hoping to achieve a preliminary political agreement between member states' ambassadors in November. This despite the lack of a German government. It remains to be seen whether this is attainable.

The meeting showed that whilst disagreements persist on a safeguard clause, global public CBCR increasingly acknowledged as the way to go.

On the safeguard clause and geographic scope

Regarding the safeguard clause, which would allow companies not to publish certain information due to sensitivity, the member states continue to disagree. On the one hand, several member states argue that such a clause is not needed as it would distort the potential comparability of reported information. Conversely, an increasing number of member states agree with the need for such a safety clause, but argue that it is crucial to clearly define what can be considered as 'commercially sensitive information'.

The Estonian presidency suggested having a solution which would only allow postponing the publication of sensitive information for a certain time period. However, member states are still not convinced that this is the best way forward. Countries such as France, Luxembourg and Malta maintain that it does not make sense to force businesses to publish the information retroactively, since the information remains sensitive even at later periods.

The only area where there is complete consensus is that there should be no additional administrative burdens for tax authorities resulting from the right not to make public certain parts of PCBCR reports, as suggested by the European Parliament in its own report.

The territorial scope of the PCBCR has also yet to be finalised. Interestingly, however, more and more member states appear to agree that having a global PCBCR would not be problematic.

Other items discussed

The attaches also continued the discussion on whether or not this is a taxation or an accounting issue, and whether terminology from one domain or the other was more appropriate to be used.

Also on the menu was how to calculate turnover, particularly when it comes to consolidating the financials of subsidiaries which – in the words of one attache – are established solely for the purposes of avoiding tax obligations

Finally, additional disclosure items (probably in line with the European Parliament's proposals) were also discussed, but with no definitive conclusion.

Estonians continue to push with the absence of a German government

Against initial expectations, it now seems that the Estonians are going to push for a preliminary political agreement despite the fact that German coalition negotiations are still ongoing. Germany remains pivotal to unblocking the file at a political level.

The Estonian Presidency is clearly much more in favour of the proposal than their predecessors in Malta. They have already held two meetings on the topic at a time when the domestic situation in Germany renders it almost impossible that any definitive progress could be achieved.

The Presidency plans to hold one more meeting, on 14 November, at the attache level. Moreover, at the end of November there will be a meeting at COREPER (ambassadors) level, to ensure that there is a political agreement.

It remains to be seen whether the Estonians will have the courage of their convictions, let alone the numbers in the Council, to move ahead despite possible German opposition. In the meanwhile, many observers continue to insist that it would be better to continue to monitor the situation in Berlin, rather than Brussels for the time being.

EU Summit: member state leaders discuss taxation of the digital economy, France tones down its calls for turnover tax – 19 October

EU Heads of Government have held an exchange of views on the taxation of the digital economy at the latest European Council summit. In the subsequent Council conclusions, member states commit to pursuing discussions on the taxation of the digital economy, but in line with OECD's work.

It appears that **France** has toned down its calls for taxing the turnover of digital companies. This change in tone follows a visit of French officials into the US, where they met their **US** counterparts as well as representatives of Silicon Valley companies. In parallel, the more critical countries are becoming increasingly vocal. At the EU summit, notably Irish and Luxembourgish leaders warned that the EU should not move unilaterally.

However, the fact remains that certain jurisdictions have already introduced unilateral national measures. For example, India has introduced a 6% levy on gross consideration for B2B digital advertising services. Italy, for its part, introduced a voluntary ruling procedure for digital businesses. The procedure enables digital businesses to

agree in advance with the Italian tax authorities a ‘fair share of profit’ allocated to their Italian activities. If a business does not take up the opportunity, they face an increased risk of an Italian tax audit.

Several member states as well as the European Commission fear that in the lack of OECD or EU-level progress in this area, such national unilateral measures will continue to spread. They increase the risk of tax disputes, and may have detrimental effects to the functioning of the single market.

Court of Justice of the EU – Rulings

C-65/16: The Hungarian tax on motor vehicles is incompatible with the EEC-Turkey Association Agreement – 19 October

The Second Chamber of the CJEU has ruled that a tax on motor vehicles, which must be paid by persons operating heavy goods vehicles registered in Turkey and in transit through Hungarian territory, constitutes a charge having equivalent effect to a customs duty. Thus, the Court maintains that any pecuniary charge imposed unilaterally on goods that cross a frontier and which is not a customs duty in the strict sense constitutes a charge having equivalent effect to a customs duty.

C-573/16: Indirect taxes on the raising of capital – 19 October

The Seventh Chamber of the CJEU has ruled, notably, that it is forbidden to tax a transfer of shares where the legal title to all the shares of a company has been transferred to a clearance service for the sole purpose of listing those shares on a stock exchange, without there being any change in the beneficial ownership of those shares.

C-101/16: Right to deduct VAT – 19 October

The Second Chamber of the CJEU has ruled that national rules may not refuse to deduct VAT to a taxable person on the ground that the trader which supplied a service to that taxable person and issued a corresponding invoice, on which the expenditure and the VAT are indicated separately, has been declared inactive by the tax authorities of a member state, that declaration of inactivity being public and accessible on the internet to any taxable person in that state, in the case where that refusal of the right to deduct is systematic and final, making it impossible to adduce evidence that there was no tax evasion or loss of tax revenue.

C-534/16: Provision of guarantees for VAT registration purposes – 26 October

The Ninth Chamber of the CJEU has ruled that national tax authorities may require a taxable person to provide a guarantee of up to EUR 500,000 at the time of VAT registration, when the director was formerly the director or associate member of another legal person which had not complied with its tax obligations.

C-90/16: DEFINITION OF 'SPORT' FOR VAT PURPOSES – 26 October

The Fourth Chamber of the CJEU has ruled has ruled that duplicate bridge is not to be considered as a “sport” for the purposes of the VAT Directive, since its “physical element” is negligible.

C-39/16: Deductibility from the taxable profits of the parent company – 26 October

The Fifth Chamber of the CJEU has ruled that national law may not deny profit tax deductions for a parent company on interest paid by the parent company under a loan up to an amount equal to that of the dividends, which already

benefit from tax deductibility, that are received from the holdings of that parent company in the capital of its subsidiary companies that have been held for a period of less than one year. This even if such interest does not relate to the financing of such holdings.

International

SENATE PREPARES WAY FOR TRUMP'S TAX CUTS, draft tax bill to be expected soon – 20/24/27 October

The US Senate and House of Representatives have passed a draft budget that would increase the federal deficit by \$1,5 trillion over the next decade as a result of planned tax cuts.

The adopted draft budget is seen as paving the way for the tax reforms. Indeed, after the votes the Republican Senate and House leaders confirmed that they intend to publish the draft tax reform legislation within the next few days, reportedly already on Wednesday 1 November.

Poland launches public consultation on tax intermediaries – 20 October

The Polish Ministry of Finance has launched a public consultation on mandatory disclosure rules.

This is in line with Poland's stance on the Commission's proposed tax intermediaries legislation, which maintains that the proposal should only be a minimum standard which member states may choose to render even stricter. The deadline for responding to the consultation is 15 November.

French parliament adopts wealth-tax cut – 24 October

As reported notably by the Financial Times (article only available to subscribers), France is getting rid of its wealth tax except for property assets, and introducing a 30% flat capital gains tax. Apparently, this means a de facto 70% cut in the wealth tax.

"Panama Papers 2.0: Law Firm Hack Puts the Wealthiest at Risk of Being Exposed" – 25 October

Reportedly, there has been a hack into the database of a Bermuda-based law firm, Appleby. Apparently, some leaked information is already available.

The hack may have led to the leak of information concerning the financial affairs of wealthiest individuals. In the meanwhile, Appleby insists that it is only advising on "legitimate and lawful" matters, and fears that if leaked, the information could lead to misinterpretations of what it maintains are "legitimate and lawful structures used in the offshore sector".

OECD

OECD and tax administrations discuss BEPS implementation at regional meeting in the Slovak Republic – 20 October

80 delegates from 20 countries and 11 organisations have [gathered](#) in Bratislava, Slovakia, for the third regional meeting of the Inclusive Framework on BEPS in the Eastern Europe and Central Asia region. This meeting belongs to a new series of regional events that offer participants from different regions in the world the opportunity to provide their views and input on the Inclusive Framework from a regional perspective and in a regional setting.

During the meeting, participants discussed and shared the steps and actions taken in their respective jurisdictions to implement BEPS measures. The meeting also offered the opportunity to discuss recent developments, with a specific focus on the peer-review mechanisms as well as timelines for the implementation of the minimum standards.

Public consultation on transfer pricing matters 6-7 November 2017 – 20 October

In early-November, the OECD will [organise](#) a public hearing on transfer pricing in Paris.

The public hearing will focus on two publications – on profit splits and profit attribution to permanent establishments – that were published in June this year. For further information on the two OECD publications, please consult the [Tax Policy Update](#) from 23 June.

OECD delivers implementation guidance for collection of VAT/GST on cross-border sales – 24 October

The OECD has released new implementation [guidance](#) to promote the effective collection of consumption taxes on cross-border sales.

The guidance supports the consistent implementation of internationally agreed standards for the VAT treatment of cross-border trade and is of particular relevance in the context of digitalising economies and e-commerce. The guidance focuses on the implementation of the recommended approaches included in the 2015 final report on BEPS Action 1 "Addressing the Tax Challenges of the Digital Economy". It builds on good practice approaches deployed by jurisdictions when they require foreign suppliers to register and collect VAT on cross-border B2C sales in application of the solutions recommended in the BEPS Action 1 report.

Public comments received on tax challenges of digitalisation – 25 October

The OECD has [published](#) the public comments received as part of its consultation on the taxation of the digital economy.

Not surprisingly, the public comments include input from digital companies such as Airbnb, Spotify and Blablacar. For example, Airbnb applauds in its submission the OECD's recognition (in BEPS Action 1) that there is no separate digital sector that should be subject to different tax rules. Rather, work at the OECD level should be based on improving understanding of and “demystify” new business models.

Peru joins multilateral convention – 25 October

Peru has [signed](#) the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It thus became the 114th jurisdiction to join the Convention globally, and 12th in Latin American.

The Convention provides all forms of administrative assistance in tax matters, including exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection. It also guarantees extensive safeguards for the protection of taxpayers' rights.

State Aid

Commission opens in-depth investigation into UK tax scheme for multinationals – 26 October

The European Commission has opened an in-depth [investigation](#) into a UK's CFC rules that exempt certain transactions by multinational groups from the application of UK rules targeting tax avoidance. The Commission will investigate, in particular, whether the scheme allows these multinationals to pay less UK tax, in breach of EU State aid rules.

The exemptions are granted to financing income, i.e. interest payments received from loans. The Commission's state aid investigation does not call into question the UK's right to introduce CFC rules or to determine the level of taxation. Rather, the investigation aims to ensure that some companies are not given a better tax treatment than others. Case law makes clear that an exemption from an anti-avoidance provision can amount to such a selective advantage.

Other News

EESC publishes opinion on the taxation of the collaborative economy – 19 October

The European Economic and Social Committee (EESC) has published its [opinion](#) on the taxation of the collaborative economy.

The non-binding opinion states, in particular, that the tax system for the collaborative economy should comply with the principle of neutrality, i.e. not to interfere with market development. Moreover, there should be a rapid construction of a uniform, integrated European system that ensures common rules for the different member states regarding the collaborative digital economy.

GUE-NGL: ACCOUNTANCY EUROPE'S "LOBBYING" RESPONSIBLE FOR non-separation of audit and tax advice – 20 October

The far-Left GUE-NGL Group of the European Parliament has published a [statement](#) as a follow-up of the PANA Committee vote on 18 October.

In the statement, the Group's shadow rapporteur laments that the centre-Right EPP Group attempted to block amendments to the report calling for a separation of tax advisors and auditors. Moreover, the rapporteur argues that this was the result of lobbying by Accountancy Europe.

As stated in the [Tax Policy Update](#) from 13 October, Accountancy Europe sent a public [letter](#) to the Committee Chair and all 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 is committed to inform the debate, and is glad to see that its input has contributed to the discussions at the Committee.

Greens-EFA report: Veolia engages in aggressive tax planning – 27 October

The Greens-EFA Group of the European Parliament [accuses](#) the French group VEOLIA for engaging in ‘aggressive tax planning’.

The allegations are based on an investigation and report that the Greens have produced on VEOLIA’s tax group schemes in France, the UK and the US. The report describes the structure and activities of VEOLIA, and maintains that its tax arrangements are formally legal. However, the Greens argue that the company’s conduct is morally unacceptable, and that paying “fair share of tax” should be the top CSR priority of every company.

The report puts forward notably the following five recommendations:

- EU must introduce public CBCR
- EU must agree on a CCCTB
- Put an end to member state unanimity on tax, and grant the European Parliament equal legislative powers
- Establish a minimum corporate tax in Europe
- VEOLIA should replace its tax management.

Events

- 21/11/2017, **FairTax meets COFFERS: Joint Perspectives on Fair and Sustainable Taxation**, Umea University, Brussels. [Source](#)
- 22/11/2017, **Achieving Tax Certainty In a World of Uncertainty**, EBF, Brussels. [Source](#)
- 23-24/11/2017, **Annual Conference on European VAT Law 2017**, ERA, Brussels. [Source](#)
- 24/11/2017, **10th CFE Professional Affairs Conference**, CFE, Prague. [Source](#)