ACCOUNTANCY EUROPE.

Policy update

Tax Policy

11 – 19 December

HIGHLIGHTS

- OECD: new public consultation mandatory disclosure rules for CRS avoidance arrangements and offshore structures – 11 December
- European Parliament: Plenary votes on PANA recommendations – 13 December
- State aid: Commission investigates Netherlands' tax treatment of IKEA – 17 December
- European Commission: Commission proposes to maintain minimum VAT rate of 15% under definitive regime – 19 December

European Commission

Joint declaration on EU legislative priorities for 2018-2019 – 12 December

The European Commission, European Parliament and the Council of the EU have agreed on their joint legislative priorities for 2018-2019.

The joint declaration is fairly generic in wording, but provides some political indication on the areas where further efforts could be expected in the next two years to come. For example, the document highlights the three institutions' commitment to tackling tax avoidance, evasion and fraud, and to fight for a "fair tax system".

Commission reports on the need for better cooperation to improve tax and VAT collection in the EU – 17 December

The Commission has published three reports and a set of recommendations for member states on how to better work together towards better direct tax and VAT collection for national budgets. All the reports and accompanying documents are available here.

The Commission argues that investment in digital and IT systems as well as in human resources will be crucial if EU countries want to improve their public finances. The published reports highlight the overall positive impact of the

EU-wide cooperation between tax administrations on tax collection, but also show that member states have to deploy more resources to improve tax collection.

European Commission proposes to maintain minimum VAT rate of 15% under definitive regime – 19 December

The European Commission has published and calls for stakeholders' views on a proposal to establish the EU minimum standard VAT rate to 15%, even under an eventual destination-based definitive regime.

The Commission maintains that although a definitive VAT system would allow to grant member states more flexibility in setting VAT rates, a minimum standard VAT rate should be maintained and made permanent. It reasons that since all member states currently apply a standard rate of at least 17%, the current arrangement for a minimum standard rate of 15% remains appropriate. The Commission, therefore, proposes to permanently implement an agreed limit that it maintains will ensure the proper functioning of the internal market whilst leaving flexibility for member states in setting the standard VAT rate at the same time.

Stakeholders are invited to provide their views on the Commission's proposal by 13 February 2018.

European Parliament

European Parliament Plenary votes on PANA recommendations – 13 December

The European Parliament Plenary has voted on the final recommendations of the PANA Committee. The recommendations were adopted with 492 in favour, 50 against and 136 abstentions.

The recommendations compile the Parliament's proposals for policy action in order to tackle phenomena revealed by the Panama leaks, including tax avoidance, evasion and money laundering.

From the accountancy profession's perspective, the following were of interest. Frist, a paragraph calling for re-opening the Audit Directive to introduce for non-PIE auditors a mandatory seven-year rotation and prohibiting the provision of non-audit services was defeated. By contrast, a paragraph calling on the Commission to separate "accounting firms" from tax and financial services providers was maintained with a narrow margin of seven votes.

The recommendations are non-binding, but they represent the European Parliament's position on the topic. The Commission will, in the next few months to come, inform the Parliament on what action it will take on each of the recommendations, and explain why if it chooses not to take action on a particular one.

It appears that the European Parliament will establish another special Committee to investigate the Paradise Papers, with a mandate running until the end of this parliamentary term. The MEPs would also like to establish a permanent tax Committee after the spring 2019 EU elections.

Council

France to push for European financial transactions tax – 10 December

Four ministers of the French government have signed a joint statement calling for a European financial transactions tax (FTT) in order to help finance the fight against climate change. The ministers believe that the tax could raise up to EUR 5 billion by 2020.

EU finance ministers warn against US tax reform – 12 December

The finance ministers of France, Germany, Italy, the UK and Spain have warned against the proposed US tax reforms which they believe could have a "major distortive impact on international trade", cause double taxation and be in breach of WTO rules.

For example, the ministers argue that the proposed 20% excise tax on payments to foreign affiliated companies could impact genuine commercial arrangements. This is because it would only apply where payments are made for foreign goods and services. The ministers are also concerned about the proposed preferential regime for the sales and licensing of American goods or services outside the US, which would benefit from a reduced rate of 12.5%. The ministers argue that such an incentive would effectively subsidise exports.

Court of Justice of the EU – Rulings

C-305/16: Sales through intermediaries not subject to VAT – 14 December

The Third Chamber of the CJEU has ruled on a UK case concerning the application of a derogation to the rule whereby the value of the supply is the sale price charged by the supplier. The Court maintains that the derogation for direct selling cannot be applied in a modified way so as to take into account any notional input tax.

International

Mongolia vows action to get off EU tax haven blacklist – 14 December

The EU's recently published blacklist of non-cooperative jurisdictions is already bearing fruit, as Mongolia has committed to reforming its tax system in order to be taken off the list.

The country's foreign minister has stated that Mongolia will "have to implement a series of coordinated measures at all levels of government" and be cooperative with the EU. His comments came after discussions with "European counterparts".

For further information on the blacklist, please see Accountancy Europe's Tax Policy Update from 8 December.

Republicans forge tax deal reached, final vote imminent – 19 December

House Republicans are expected to adopt a major overhaul of the US tax system on Tuesday 19 December. This follows a compromise reached between the Republicans in the House and those in the Senate.

In the compromise, the corporate tax rate would be cut to 21% - instead of the initially planned 20%. Moreover, multinationals would face a higher than expected one-off tax on their overseas profits, with a 15.5% levy on liquid assets and an 8% one on illiquid assets. Some tax experts have already warned that the rapid speed at which the tax bill has been pushed through may have impaired its quality, and the reforms could end up opening new loopholes.

OECD

OECD seeks input on new tax rules requiring disclosure of CRS avoidance arrangements and offshore structures – 11 December

The OECD has launched a public consultation on mandatory disclosure rules for tax intermediaries that advice on arrangements that attempt to circumvent the Common Reporting Standard (CRS).

The proposed disclosure rules are intended to target promoters and service providers with a material involvement in the design, marketing or implementation of CRS avoidance arrangements or offshore structures. Such intermediaries would have to disclose information on the scheme to their national tax authority.

The rules contemplate that information on those schemes (including the identity of any user or beneficial owner) would then be made available to other tax authorities in accordance with the requirements of the applicable information exchange agreement.

It appears that like with the Commission's tax intermediaries proposal, advisors that benefit from legal professional privilege can pass on the reporting requirement to the taxpayer benefitting from the arrangement.

The deadline for responding to the consultation is 15 January 2018.

The Bahamas and Zambia make commitments on BEPS – 14 December

The Bahamas and Zambia have joined the Inclusive Framework on BEPS, thereby bringing the total number of signatory jurisdictions to 110.

Moreover, the Bahamas has committed to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It is the 116th jurisdiction to sign up. The Convention provided for all forms of administrative assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection.

Second round of peer reviews on implementation of BEPS minimum standards on improving tax dispute resolution mechanisms – 15 December

The OECD has released the second round of analyses of individual country efforts to improve dispute resolution mechanisms.

The new seven peer review reports represent the second round of stage 1 evaluations of how countries are implementing new minimum standards of the OECD BEPS Project. The reports relate to implementation by Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden.

A document addressing the implementation of best practices is also available on each jurisdiction that opted to have such best practices assessed. These seven reports include over 170 recommendations relating to the minimum standard. In stage 2 of the peer review process, each jurisdiction's efforts to address any shortcomings identified in its stage 1 peer review report will be monitored.

State Aid

LUXEMBOURG APPEALS AMAZON'S EU TAX VERDICT – 15 December

Luxembourg has appealed against a Commission decision ordering Amazon to pay it back EUR 250 million in taxes.

Luxembourg disagrees with the Commission's interpretation that it granted Amazon a selective advantage, as well as with its analysis on transfer pricing. Luxembourg insists that with its ruling, it aimed to provide legal certainty whilst not undermining its commitment to tax transparency and fighting against harmful tax practices.

For further information on the Commission's decision, please refer to Accountancy Europe's Tax Policy Update from 13 October.

Commission investigates Netherlands' tax treatment of IKEA – 17 December

The European Commission has opened an in-depth investigation into the Netherlands' tax treatment of Inter IKEA, one of the two groups operating the IKEA business.

The Commission is concerned that two Dutch tax rulings may have allowed Inter IKEA to pay less tax and given them an unfair advantage over other companies, in breach of EU State aid rules:

- The first ruling 2006-2011: Commission will assess whether the annual licence fee paid by Inter IKEA Systems to I.I. Holding reflects economic reality. In particular, it will assess if the level of the annual licence fee reflects Inter IKEA Systems' contribution to the franchise business
- The second ruling from 2011 onwards: Commission will assess whether the price Inter IKEA Systems agreed for the acquisition of intellectual property rights and consequently the interest paid for the intercompany loan reflect economic reality. In particular, the Commission will assess if the acquisition price adequately reflects the contribution made by Inter IKEA Systems to the value of the franchise business, and the level of interest deducted from Inter IKEA Systems' tax base in the Netherlands

Other News

Reflections on taxing digital businesses and better fighting tax avoidance – 11/13 December

David Pegg and Rita De La Feria have contributed to the ongoing debates on how to tax the digital economy and how to render tax systems more resilient against tax avoidance.

In his article, David focuses on solutions to ensure that digital businesses are properly taxed. He argues for moving towards unitary taxation. He acknowledges critics who maintain that unitary taxation should be agreed upon at an international level, lest risk leading to double-taxation. He finds the argument unconvincing, however, given that multinationals have benefitted from non-taxation for years now. Therefore, even a national unilateral move is acceptable.

Rita, for her part, maintains that moving to a destination-based corporate tax system would put an end to most forms of tax avoidance. She discusses some practical difficulties that such a tax system would face, including the possible unfairness towards developing countries whose domestic markets are weaker than those of more developed countries. She maintains, however, that such a system would still be preferable to the current international tax system, which is "fundamentally rigged" against developing countries. Moreover, it would put an end to rates-based tax competition.

GUE-NGL publishes brochure on Panama Papers, calls for more regulation of the Big Four – 12 December

The European Parliament's far-Left GUE-NGL Group has published a booklet on what it sees as the main issues identified in the Panama Papers leaks.

In the booklet, Richard Murphy argues that fundamental conflicts of interest exist in large accounting firms providing both audit and tax related services. Therefore, he calls for eventually splitting entirely their audit and other professional services. However, until this is possible, the large firms should be required to ringfence the two from each other worldwide as a condition of being licenced to provide services in the EU.

Insurance Europe publishes position on tax intermediaries proposal – 13 December

Insurance Europe has published its position on the European Commission's tax intermediaries proposal. In its opinion, Insurance Europe notably argues that:

- The proposal could be burdensome for taxpayers in cases where the Commission proposes to shift the reporting burden from tax intermediaries to taxpayers (such as in the case of a legal professional privilege)
- The proposed five-day deadline for reporting is too short for both taxpayers' and tax intermediaries' reporting. NB the latest Council compromise on the file appears to have increased this to 15 days
- The criteria that trigger a reporting obligation are too vague. Instead, a clearer definition of the hallmarks is needed in order to render the reporting obligation more manageable

Events

- 30/01/2018, ***Public hearing on simpler withholding tax procedures for Europe***, European Commission, Brussels. Source