ACCOUNTANCY EUROPE.

Policy update

Tax

8 – 19 January

HIGHLIGHTS

- Council: Bulgarian Presidency sets out its priorities, including on tax – 8 January
- International: US tax overhaul sparks first reactions and impacts – 8/17 January
- European Parliament: ECON Committee close to agreement on including auditors in intermediaries proposal – 11 January
- European Commission: new proposals to grant more leeway on VAT rates and simplify VAT burdens for SMEs – 18 January

European Commission

Commission proposes more leeway for member states on VAT rates, and new VAT alleviations for SMEs – 18 January

The European Commission has published its long-awaited new VAT package consisting of two core elements:

- A proposed reform of **VAT rates**, giving member states more leeway on setting their national rates. The proposal is accompanied by an Annex listing the goods and services on which reduced rates and exemptions **may not be applied**
- A proposed reform of the special VAT scheme for SMEs

Accountancy Europe responded to both the consultation on the SME scheme as well as on VAT rates.

Highlights

The proposal to reform **VAT rates** contains the following elements of main interest:

- **Why:** The Commission reasons that with the move towards the 'definitive regime' and the destination principle, there is no need to continue restricting member states' VAT policies. Thus the VAT rates proposal specifies that its provisions will enter into force at the same time as the definitive regime
- **Existing rates/derogations:** these will disappear after the destination principle has been introduced, but the proposed VAT rates reform will enable member states to apply reduced rates and derogations at their own discretion and within the proposed boundaries

- **Main changes:**
    - A minimum standard 15% VAT rate will continue to apply, and the weighted average VAT rate should be at least 12%
    - Member states will be required to ensure that reduced rates benefit the final consumer
    - For products, member states will be allowed to set:
        - Two separate reduced rates of between 5% and the standard rate (15%) chosen by the Member State
        - One exemption from VAT ('zero rate')
        - One reduced rate set at between 0% and the reduced rates
    - The current list of goods and services to which reduced rates can be applied would be abolished and replaced by a **new list of products** (such as weapons, alcoholic beverages, gambling and tobacco) to which the standard 15% rate or above would always be applied. The full list should be evaluated every five years, and is presented in the Annex to the proposal

The proposal on a **special scheme for SMEs** contains the following elements of main interest:

- Why:
    - Current SME simplification measures are only available to those small companies which qualify and use the VAT exemption
    - They are also only available nationally, meaning that firms that trade cross-border cannot access exemptions and simplification measures in another country
    - Small businesses bear proportionally higher VAT compliance costs than large businesses as many of the costs are fixed, rather than proportional to turnover. Small businesses that have no access to VAT simplification measures suffer from a competitive disadvantage to those that do
- **Objectives:** reduce SMEs' VAT compliance costs by 18% per year, leading to an increase in their cross-border trading activity by about 13%. The Commission estimates that it should also have a positive revenue impact in the longer term due to the general positive effect on the small enterprises' output
- Main changes:
    - Possibility for member states to free all small businesses that qualify for a VAT exemption from obligations relating to identification, invoicing, accounting or returns
    - **Thresholds:**
        - National exemption thresholds will be maintained
        - A €2 million revenue threshold across the EU, under which small businesses would benefit from simplification measures, whether or not they have already been exempted from VAT. This should expand the number of companies that can benefit from simpler rules
        - A turnover threshold of €100,000 which would allow companies operating in more than one member state to benefit from the VAT exemption
    - Simplification measures:
        - Simplifications to VAT registration, VAT record keeping as well as the possibility of benefitting from less frequent filling of VAT returns
        - In addition, VAT-exempt companies will enjoy the relief from VAT registration or simplified registration and from invoicing obligations

Next steps

Both proposals will have to be adopted by unanimity in the Council. As always with tax files, the European Parliament will be consulted but its eventual opinion is legally non-binding. The whole process will take several months at best.

European Parliament

Sven Giegold calls for an ECON Committee DEBATE ON EY'S SUSPECTED CASE OF conflict of interest – 5 January

The influential Green MEP, **Sven Giegold (Greens-EFA/GER)**, has raised an issue out of a case in Italy, where a former EY employee was hired by the Treasury whilst still receiving payments from her former employer, EY. Allegedly, the employee had access to various tax files' negotiation material and details.

Sven therefore argues that as "one of the four major auditing and consulting firms", EY was in an optimal position to prepare its clients for future tax legislation, or even use secret intel for targeted lobbying efforts aiming to undermine progress on tax. He calls, therefore, for close monitoring and strictly regulating the revolving doors between "powerful companies and the public sector".

He is also calling for a debate on this issue at the ECON Committee.

ECON hearing on tax intermediaries proposal, MEPs close to agreeing on including auditors – 11 January

ECON Committee of the European Parliament has held another debate on its draft opinion to the Commission's tax intermediaries proposal.

During the hearing, MEPs across political Groups were almost unanimous in agreeing that auditors should also be included within the scope of the proposal. It seems that this change stemmed from the Greens and, in particular, the prominent Green MEP **Molly Scott Cato (Greens-EFA/UK)**.

The centre-Right EPP Group appears to have some issues with the wording of the auditor amendments, but these are apparently more "linguistic" issues rather than substantive ones. During the debate, **Ramon Jauregui Atondo (S&D/SPA)** singled Deloitte out as a problematic firm that provides tax advisory services from outside the EU to EU-based companies. The leading MEP, **Emmanuel Maurel (S&D/FRA)** remains optimistic that an agreement on auditors will be reached.

In terms of next steps, ECON Committee will vote on its draft opinion on 24-25 January, whilst a Plenary vote is scheduled for 2 February. The Bulgarian Presidency, for its part, is aiming for a political agreement at the 13 March ECOFIN. Unlike in the European Parliament, the inclusion of auditors within the proposal's scope has not emerged in the discussions between member states.

Council

Bulgarian Presidency has ambitious plans for tax – 8 January

The Bulgarian Council Presidency has ambitious plans for key tax files during its six-month term.

First, the Presidency will aim for a political agreement on the tax intermediaries file at the 13 March ECOFIN. During recent tax attache meetings on the file, a number of contentious points have been resolved, and the main remaining ones are the hallmarks and ensuring consistency with the OECD. The Presidency also wants to see progress on CCTB and to build political support for the Commission's digital tax proposal expected for 28 March.

On VAT, the Presidency wants to achieve "significant progress" with the first step of the definitive regime and the proposal enhancing administrative cooperation to fight VAT fraud. Finally, the Presidency wants to start work on the SME scheme proposal that was recently published (see article above).

Ireland, Hungary Unite Against EU Tax Harmonization – 8/17 January

Ireland and Hungary have found common ground in opposing EU efforts for further tax harmonisation.

Hungary's **Viktor Orban** agreed with the Irish prime minister, **Leo Varadkar**, that taxation (corporate and others) is an important area of competition, and should therefore be left into the hands of national governments. In his later speech held at the European Parliament, Leo Varadkar defended tax competition by emphasising that competing between member states would enhance EU's global competitiveness as a whole.

Ireland is also strictly opposed to any changes to EU's tax decision making. **Commissioner Moscovici** has suggested moving away from unanimity to Qualified Majority Voting on tax files.

List of non-cooperative jurisdictions to be amended – 12 January

The EU member states are planning to remove eight out of the 17 jurisdictions from its list of non-cooperative jurisdictions on tax. This is because the jurisdictions have made high-level reform commitments which EU leaders have deemed to be satisfactory.

The jurisdictions to be removed would include Panama, South Korea, United Arab Emirates, Barbados, Grenada, Macao, Mongolia and Tunisia. This means that American Samoa, Bahrain, Guam, the Marshall Islands, Namibia, Palau, Saint Lucia, Samoa, and Trinidad-Tobago would be retained on the list. The eight jurisdictions would be moved to the so-called grey list, which contains those that have made satisfactory reform commitments but are yet to deliver.

To further bolster the dissuasiveness of the list, the Council's Code of Conduct Group on business taxation will discuss in the month to come possible sanctions on blacklisted jurisdictions. For the time being, it seems that possible sanctions would be discussed by the EU finance ministers in March.

In the meantime, **Commissioner Moscovici** has called for the letters of commitment submitted to the Council to be published. He has also reacted to critics who argue that the EU list is whitewashing and ignores EU's own tax havens. According to Moscovici, there are no tax havens in the EU, but there are what he called "black holes" – countries that are too lenient towards "aggressive tax planning".

Court of Justice of the EU – Rulings

C-249/15: Vehicle registration tax – 18 January

The Ninth Chamber of the CJEU has ruled in for restricting member states' legislation concerning the tax treatment of registering vehicles leased from another member state.

C-463/16: Single supply and VAT – 18 January

The Ninth Chamber of the CJEU has ruled that a single supply which comprises of two distinct elements (principal and ancillary) which, if they were supplied separately, would be subject to different rates of VAT, must be taxed solely at the VAT rate applicable to that single supply. That rate would be determined according to the principal element, even if the price of each element forming the full price paid by a consumer in order to be able to receive that supply can be identified.

International

HMRC updated its standard for agents – 4 January

HMRC has updated its standard for tax agents. The standard sets our minimum norms that tax agents should adhere to whilst providing tax services to UK taxpayers. This is the first update to the standard since its publication in August 2016.

HMRC recognises that many agents and advisors are already adhering to minimum standards established by professional bodies. Therefore, its own standard is aimed first and foremost at those agents that are not affiliated to a professional body.

The standard sets expectations on agents' integrity, professional competence and behaviour. On tax planning specifically, HMRC expects tax professionals to only devise and offer lawful arrangements which are transparent, not highly artificial or contrived, or that seek to exploit shortcomings in relevant legislation.

"INDIA'S TAX OVERHAUL UNLEASHES LOGISTICS REVOLUTION" – 8 January

The Financial Times reports about the positive impact that the recent tax reforms in India have had on logistics and the delivery of goods (article only available to subscribers). The recent introduction of a national GST removed the need for tax enforcement at state borders, which has already led to significant reductions in the time trucks spend stationary at border checkpoints.

US tax reform sparking reactions far and wide – 8/17 January

The recently approved major US tax overhaul has already started to spark reactions and have an impact on the economy.

Apple has announced that it will repatriate $38 billion from its overseas accounts and subsidiaries back to the US, invest $55 billion into the US economy and create an additional 20,000 jobs in the country. The move is, in part, incentivized by a one-off reduced 15,5% tax that would be applied to all repatriated wealth. Apple's move will also

raise questions on the EU's order for the company to pay Ireland 13 billion of tax income. Both Ireland and Apple have appealed the Commission's ruling.

Also, despite the US cutting its corporate tax rate from 35% to 21%, the head of Ireland's foreign investment organization (IDA) assesses that Ireland will not lose its competitiveness and attractiveness for businesses. She has faith in the country's 12,5% rate, and reminds that investment considerations are not solely based on tax.

In the meanwhile, Deutsche Bank (DB) has reported that its 2017 profits will take a hit due to the US tax reform. This is the result of an additional 1,5 billion non-cash tax charge in the bank's consolidated financial results for Q4 2017. Apparently, the loss stems from a revaluation of its US deferred tax assets, which reflects the new 21% corporate tax rate. However, DB predicts that the reduction in the US corporate tax rate will eventually decrease the bank's overall tax rate.

Finally, the US Treasury undersecretary **David Malpass** has stated that the US is not yet in a position to assess or address the concerns raised, notably, by the European Commission and four member states on the tax reforms. Mr. Malpass insists that the adopted reform legislation will not have to be carefully analysed.

For further information on the concerns raised by the Commission and four EU member states, please refer to Accountancy Europe's Tax Policy Updates from 19 December 2017 and 5 January 2018.

HMRC forces Apple to pay £137m extra tax – 10 January

HMRC has ordered Apple to pay an additional £137 million in taxes following a tax audit. Reportedly, the payment constitutes a corporate income tax adjustment that covers the years until September 2015 and "reflects the company's increased activity". It also appears that Apple's tax payments will increase in the future as the adjustment is incorporated into future tax bills.

Swiss Government Pushes For Adoption Of Tax Overhaul – 11 January

Switzerland's Federal Council has called for tax reforms, but warned that the reforms will require a lot of compromises from the Cantons.

Indeed, the proposed reforms appear rather fundamental. For example, the special arrangements for cantonal status companies would be abolished, and the Cantons would have to introduce patent box regimes with the option of introducing additional tax deductions for R&D. Swiss operating companies of foreign companies will be entitled to a flat-rate tax credit, and the dividend taxation for natural persons will be increased to 70% at federal and cantonal level. Moreover, companies that relocate their headquarters to Switzerland would be able to benefit from additional amortization in the first few years of operations.

Zurich Sees Surge In Tax Confessions as a result of CRS – 12 January

The Zurich Canton in Switzerland has reported a three-fold increase in disclosures of previously undisclosed assets. Apparently, the surge stems from commitment to automatically exchange of tax information under the OECD's Common Reporting Standard (CRS), with countries beginning to make first exchanges in 2018.

ATO: Paradise Papers revealed 'commoditisation' of tax avoidance – 15 January

According to the Australian Tax Office (ATO), the Paradise Papers have revealed the industrial scale of commodified tax avoidance.

Apparently, ATO has already identified 731 Australian taxpayers and 344 corporate entities from the leaked data. ATO will now proceed to cross-match the data with the Panama Papers revelations. Especially looking into

intermediaries has revealed, according to ATO, the scale to which tax avoidance has been 'commodified'. ATO also stated that tax intermediaries often specialise in particular regions of the world, such as the Caribbean and the Atlantic Ocean, or Asia and the Pacific Ocean. Some intermediaries promote tax avoidance packages like holiday packages. The Guardian article includes a few examples of how these packages are marketed.

"Lithuania Enacts Corporate Tax And VAT Changes" – 17 January

Lithuania has approved a number of major overhauls to its tax system.

Under the new rules, newly established companies can benefit from a 0% corporate tax rate for the first year of operations, if the annual income does not exceed EUR 300,000 and the company employs no more than 10 employees. However, shareholders must be natural persons, and the company must not be reorganized or cease trading for the first three tax years.

Moreover, companies can claim a reduced 5% rate on the share of profits generated from R&D-based intangible assets. Companies may also benefit from an enhanced deduction on R&D spending. Furthermore, the reduction of taxable profit related to investment in certain fixed assets is increased from 50% to 100%. These assets include computer equipment, software and IP rights, machinery and equipment, and road transportation vehicles such as trucks.

On VAT, thermal energy equipment qualifies for a reduced 9% rate. Moreover, all non-reimbursable prescription medicines are subject to a 5% VAT, a measure reportedly intended to increase access to medicines.

OECD

Panama joins international tax co-operation efforts to end bank secrecy – 15 January

Panama has signed the CRS Multilateral Competent Authority Agreement (CRS MCAA), thus becoming the 98th jurisdiction to do so. According to the OECD, CRS MCAA is the prime international agreement for implementing the automatic exchange of financial account information under the Multilateral Convention on Mutual Administrative Assistance.

Public comments received on new tax rules requiring disclosure of CRS avoidance arrangements and offshore structures – 18 January

The OECD has published all comments received to its consultation on disclosure rules for tax arrangements aiming to circumvent the Common Reporting Standard (CRS). A total of 29 contributions were received.

The model 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. The proposed rules would require such intermediaries 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.

State Aid

Commission opens investigation into Polish tax incentive for shipyards – 15 January

The European Commission has opened an in-depth investigation into a Polish tax scheme for shipyards. It has concerns that the scheme would give some shipyards a selective advantage over competitors.

The Polish scheme grants shipyards operating in Poland an option to pay a 1% flat-rate tax on sales from the building and conversion of ships, instead of paying the generally applicable corporate or personal income tax. Thus shipyards are granted the possibility of paying less tax than under the normal corporate income tax (19% on taxable income) or personal income tax regime (18% or 32% on taxable income for natural persons, or 19% for entrepreneurs). In addition, the payment of the flat-rate tax is postponed until the building or conversion of a ship is completed.

The Commission is concerned that the flat-rate sales tax constitutes so-called operating aid, using public funds to relieve shipyards from costs they would otherwise have to bear. Generally speaking, operating aid is not allowed under EU State aid rules since it distorts competition. With the Polish scheme, the Commission suspects that the aid would harm shipyards elsewhere in the EU, as they would not be eligible to benefit from the tax scheme. In addition, the Commission argues that the aid does not seem to be necessary, given that there are shipyards in Poland which are able to compete on the market on their own merits.

Events

- 24/01/2018, ***Corporate taxation in the digital era***, Bruegel, Brussels. Source
- 30/01/2018, ***Public hearing on simpler withholding tax procedures for Europe***, European Commission, Brussels. Source