Policy update

Tax Policy Update

19 February – 2 March

HIGHLIGHTS

- European Commission: plans for the taxation of digital economy leaked – 26 February
- European Commission: Commission responds to PANA Committee's recommendations, set to evaluate possibility of splitting audit firms – 26 February
- Council: EU member states debate US tax reform, heads of government to discuss digital taxation – 20/27 February
- European Parliament: new tax Committee formally established – 1 March

European Commission

Commission to look into Exchange of VAT relevant payment data, launches public consultation – 15/27 February

The European Commission is planning legislative measures in the area of exchange of VAT relevant payment data.

The Commission aims, in particular, to provide tax administrations with appropriate tools to detect fraudsters and control VAT liabilities on cross-border B2C ecommerce supplies by tracking the money flow. The Commission also seeks to ensure a level playing field for businesses and adequate data protection for any VAT-relevant payment data concerned.

Later in February, the Commission launched a public consultation in order to gather stakeholder feedback on this initiative. The deadline for responding to the consultation is 25 April.

The consultation seeks stakeholder input especially on:

- the problem of VAT fraud in the field of e-commerce (B2C cross-border sales of goods and service) and its EU dimension
- whether the current EU legal framework to fight VAT fraud provides the tax authorities in EU countries with the proper tools to fight VAT fraud in the field of e-commerce
- whether a EU harmonised approach could provide for better tools to tax authorities in EU countries to fight the VAT fraud in the field of e-commerce
- the impact of different policy options in terms of fighting fraud, regulatory costs and individuals rights, including issues of privacy and protection of personal data

Moscovici confirms the Commission will proceed with digital tax plans, Commission plans leaked – 20/26 February

Commissioner Moscovici has insisted that the Commission intends to proceed with legislative measures to address the taxation of the digital economy. A few days later, what looks like the Commission's internal memo on the taxation of digital economy was leaked.

"THIS SHIP HAS SAILED"

Responding to criticism stemming from industry stakeholders as well as certain member states, Commissioner Moscovici noted that it is no longer a question of whether taxing the digital economy will happen – "this ship has sailed".

A Commission proposal is currently expected for 21 March – a week before the initially planned 28 March. This may reflect efforts to have the proposal out well before the OECD publishes its own reflections on taxing the digital economy.

LEAKED DETAILS OF COMMISSION'S PLANS FOR TAXING THE DIGITAL ECONOMY – in brief

The leak pretty much confirms what has been expected. Two proposals (one for a long-term solution introducing a digital PE, another for short-term measures), two thresholds for short-term proposal – including EUR 750 million annual turnover, short-term proposal based on advertisement revenue tax and additional measures on platforms, use of the OSS (as with VAT), a tax rate of 1-5%, and more.

Having said that, most of the figures in the document are in brackets (or simply marked as "X/Y"/tbc), indicating that they are still subject to changes. Therefore and as always, the final proposal's provisions may differ from those of the leaked draft.

It is possible that this leak was an intentional move from the Commission to test the waters/stakeholders' reactions ahead of their proposal on 21 March.

Full highlights of the leaked draft plans

As expected, the Commission will publish **two separate proposals:** one setting out EU action on a "comprehensive solution" (long-term) for taxing the profits in the digital economy, and the other establishing an "interim targeted measure" (short-term) for the taxation of **revenues** from certain digital activities.

- **Long-term proposal:**
  - **Format of the proposal:** (1) standalone Directive on digital PE and profit allocation rules, which will be included into CCCTB negotiations (based on TFEU Article 115 – direct tax on net profits) + a Recommendation (soft-law) for member states to implement digital PE and profit allocation rules into their double tax treaties
  - **Objectives:** apply corporate tax on **profits** resulting from providing digital services in the EU
  - **Scope:** will apply in intra-EU situations between member states and situations between member states and third countries (if there is no double tax treaty in place)
    - **Threshold:** there is no group size threshold, meaning that even smaller businesses with a large digital footprint will be covered

- **Definition of digital services:** unspecified for now, but it "could be inspired" by the definition of **electronically supplied services** which currently exists on VAT (NB this means that the range of services covered is wider than in the short-term proposal)
- **Digital PE rules** – a digital PE exists where one of these criteria is met:
  - An entity derives **realised revenues** from **digital services** in a member states exceeds EUR 10 million per annum
  - The number of **active users** of the digital service in a member state exceeds "X"
  - The number of **online contracts** concluded exceeds "Y"
- **Profit allocation/taxing rights rules** – taxation should still occur where the "value" is created. Thus once a digital PE is identified based on the criteria described above, the taxable profits of that digital PE must be allocated for each member state on the basis of the following criteria:
  - **Users' engagement** and contributions to the development of a digital platform
  - The **data** collected from users in a member state through a digital platform
  - Number of users
  - User-generated content
  - NB once the amount of taxable profit is allocated to a member state, it is up to the member state to choose at what rate it taxes it

- **Short-term proposal:**
  - **Format of the proposal:** Directive on a common system to tax certain digital activities, based on TFEU Article 113 – other forms of **indirect tax**
  - **Objectives:** tax the gross revenues (without cost deduction) of a business that stem from the exploitation of digital activities based on value creation by users
    - The Commission is not a big fan of short term measures, but wishes to propose a common EU approach instead of the myriad of different and incompatible national initiatives currently undertaken or in the legislative pipeline
    - A short-term proposal whose sole objective is to enable the taxation of certain digital activities whilst waiting for agreement on the comprehensive long-term solution
  - Types of **revenue** subject to the tax:
    - Valorisation of user data – i.e. making available **advertisement space** or the **sale** of user data (e.g. Facebook, Google)
    - Intermediation services – i.e. services supplied by making available **digital platforms/marketplaces** to users, both sellers and buyers (e.g. Airbnb, Uber)
    - **NOT subject to the tax:** making digital content available to users (e.g. Netflix, Spotify)
  - **Scope and threshold** – the tax will apply to businesses that meet **both of these criteria**:
    - Carrying out supplies of the digital services that fall within the criteria outlined above
    - Above **both** of these thresholds:
      - Annual worldwide total revenue above EUR 750 million – NB notably in order to protect smaller innovative businesses
      - Annual revenue from the provision of digital services in the range of EUR 10-20 million
    - **Territorial scope:** applies on cross-border transactions between member states, a member state and third countries, and in purely domestic scenarios (NB otherwise the proposal would breach WTO rules)

- **Reporting/disclosure requirements:** businesses will be required to disclose information on where their revenues from digital services are recorded, including additional reporting requirements (e.g. a self-declaration system)
    - To minimise compliance burdens, a simplification will be proposed that is based on the **OSS** model (from the VAT area) for the declaration and collection of the tax
- **Taxing rights** – focus on user value creation:
    - Advertisement revenue tax – tax where the advertisement is displayed (and seen by the target audience), and where the users that have supplied the data are located
    - Tax on platforms/marketplaces – tax where the user paying for being able to access the platform is located
- **Tax rate:** single EU-wide rate in the region of 1-5%
    - The French minister of Finance, **Bruno Le Maire**, recently announced that the rate would be set somewhere in-between 2-6%, likely closer to the lower figure
- **Deduction:** could possibly be made deductible from corporate tax
- **Sunset clause:** the short-term measure should only apply in the absence of the long-term measure
    - However, even after the long-term measure has been introduced, the short-term measure should still be applied to **non-EU persons** carrying out digital activities involving EU users. This will be lifted after a member state has re-negotiated its double tax treaty with a third country

Commission to review DAC – 26 February

The Commission is planning to review the functioning of the Directive on Administrative Cooperation in tax (DAC).

Presumably, the Commission intends to verify that not only is the information exchanged between national tax administrations, but also used for appropriate purposes.

The evaluation and review follow an Article within DAC itself, in which it is stated that before 1 January 2019 the Commission is to submit a report that provides an overview and an assessment of the exchanges. If appropriate, the Commission should present a proposal to the Council for further strengthening of the efficiency of administrative cooperation via automatic exchange of information.

The evaluation period will last until June 2018. A public consultation within the next few months is set to take place.

Commission responds to PANA Committee's recommendations, set to evaluate possibility of splitting audit firms – 26 February

The European Commission has sent to MEPs its response to the PANA Committee's recommendations.

In the response, the Commission states that as part of its (presumably 2019) evaluation of audit legislation, it will explore the possibility and the practical impact of introducing a more differentiated requirement of legal separation between audit firms and financial or tax service providers.

The response also refers to transparency requirements for groups and networks – in response to MEPs' concerns in relation to how the Big Four are organised. The response states that the Commission will assess whether enhancements of transparency requirements for groups and networks would be appropriate in up-coming evaluations/fitness checks.

In the meanwhile, the European Parliament formally established its new tax investigation Committee – TAXE III (see section below).

European Parliament

Interparliamentary debate on tax avoidance and evasion – 19 February

As part of the European Parliamentary Week, the European Parliament held a joint discussion with representatives of national parliaments on tax avoidance and evasion.

During the hearing, **Roberto Gualtieri (S&D/ITA)**, Chair of the ECON Committee, introduced the European Parliament's work on tax inquiries and recommendations, but lamented that the Parliament is only consulted on tax matters. He mentioned, in particular, work on the C(C)CTB (see article below), and insisted that the Council should move ahead on the public CBCR file.

Exchange of letters between the Parliament and Council on public CBCR

Indeed, earlier in February Mr. Gualtieri sent a letter together with JURI (legal affairs) Committee's Chair **Pavel Svoboda (EPP/CZE)** to the Council, urging member states to end the current deadlock on public CBCR.

The Bulgarian Presidency later replied to this letter, reminding that "certain countries" the proposal to be a tax file and thus subject to Council unanimity with simple consultation of the European Parliament. This is the position of the Council's own legal services as well, the Presidency reminded in the letter. However, member state unanimity is required to change the legal base.

The Bulgarian Presidency will continue to consult member states on the topic, but the Council will need "further time" to clarify its position, the Presidency concluded.

Highlights of the hearing

Other key interventions included the following:

- **Valere Moutarlier, Director DG TAXUD, European Commission:** gave an overview of the Commission's work and proposals on taxation. He referred, in particular, to three areas of legislation: transparency, anti-tax planning and reforming the tax system
    - On transparency, Mr. Moutarlier applauded progress on automatic exchange of information and CBCR, and emphasised that the Commission will monitor closely that the legislation is appropriately implemented and enforced
    - On anti-tax planning he referred to the tax intermediaries Directive and the importance of limiting the use of tax arrangements that erode countries' tax bases. Moreover, he reflected on the EU list of non-cooperative third jurisdictions, which he sees as an essential component in ensuring that transparency and good tax governance go beyond the EU's single market. He emphasises that the listing process is effective given that 55 new jurisdictions have pledged to review their legislative texts in order to conform with the required standards
    - Finally, Mr. Moutarlier spoke about more fundamental reforms of the tax system, with specific reference to the CCCTB and taxation of the digital economy. He expressed hope that progress will be reached on these files by the end of the current Commission's mandate
- **Wener Langen (EPP/GER), Chair of former PANA Committee:** criticised the Council's Code of Conduct Group for refusing to share documents with the PANA Committee. Apparently, the Group argued that since it is not a formal EU institution, it has no obligation to share its documents with the Parliament. Mr. Langen also lamented that many organisations turned down PANA Committee's invitation to attend its hearings, and called for stricter sanctions on organisations that refuse to attend when invited

Following these interventions, representatives from national parliaments took the floor. They all emphasised the need to fight against tax avoidance and evasion, but well-known national nuances also appeared. For example, a parliamentarian from Malta criticised the CCCTB, fearing its impact on the country's tax base and blaming it for working against smaller member states. **Paul Tang (S&D/NLD)**, for his part, defended the CCCTB proposals as reinforcing national sovereignty (over the power of multinationals), rather than eroding it. Commission's Valere Moutarlier echoed these sentiments.

On the taxation of digital economy, most speakers recognised this as an issue that needs to be addressed, but again with a degree of nuance in terms of how far the EU should proceed without the OECD.

ECON votes on C(C)CTB opinion – 21 February

The ECON Committee of the European Parliament has voted on its draft opinions on the Commission's CCTB and CCCTB proposals. The reports were drafted by the MEPs **Paul Tang (S&D/NLD)** and **Alain Lamassoure (EPP/FRA)**, respectively.

As a major change to what the Commission initially proposed, ECON MEPs agreed to introduce a digital element into both proposals – a digital PE. Furthermore, some MEPs had called earlier for a reduced threshold of EUR 40 million, but a compromise was found to settle for the Commission's proposed EUR 750 million on the condition that after seven years from the date of entry into force of the Directives, the threshold would be removed and CCCTB become mandatory for all companies.

Moreover, rather than the Commission's proposed super-deductions, ECON MEPs propose the possibility of a 10% tax credit on R&D costs below EUR 20 million. as long as these costs do not exceed €20 million. The MEPs also removed the debt-equity bias provisions, and reduced the tax deductibility of loan interest to 10% of the company's EBITDA – as opposed to the Commission's initially proposed 30%.

Calls for establishing minimum tax rates did not pass the Committee vote, but S&D and the Greens apparently intend to bring the proposal back to the table for the Plenary vote.

In terms of next steps, a vote in Plenary for both files is currently scheduled for 15 March. As always on tax files, the European Parliament can only issue its legally non-binding opinion.

MEPs from smaller member states criticise the ECON position

After the vote, three EPP MEPs from smaller member states issued strong criticism against the ECON Committee's position specifically, and CCCTB more broadly. The MEPs in question are **Esther de Lange (EPP/NLD)**, **Gunnar Hökmark (EPP/SWE)** and **Brian Hayes (EPP/IRL)**.

Speaking against their Group's formal position, the three argue that the CCCTB proposals inherently favour larger member states and criticise the lack of a country-by-country impact assessment on the potential effect of the measure on national tax bases. This demonstrates yet again that despite the European Parliament being formally organised into pan-European ideological rather than national groupings, national positions sometimes prevail over the Group position.

European Parliament publishes draft report on tax treatment of PEPP – 23 February

The European Parliament's draft recommendations on the tax treatment of the Pan-European Personal Pension Product (PEPP) has been published. The leading MEP on the file is Sophia in 't Veld (ALDE/NLD). The draft recommendations are legally non-binding.

The European Commission's initial proposal only included a non-binding recommendation for member states to apply on PEPP the most generous available national tax regime for national pension products.

Instead, Ms. in 't Veld proposes that member states grant:

- the same tax relief to PEPP as the one granted to national personal pension products, even in cases where PEPP features do not fully match all the national criteria
- a specific tax relief to PEPP, harmonised at the EU level, to be laid down in a multilateral tax agreement between member states
- a specific subsidy or premium to PEPP savers, in the form of a fixed amount or fixed percentage

European Parliament discusses removal of certain third countries from list of non-cooperative jurisdictions – 28 February

The European Parliament Plenary has held a hearing with the Council and the European Commission to discuss and debate the removal of several third countries from the EU list of non-cooperative jurisdictions for tax purposes.

During the hearing, several MEPs took the floor to unanimously criticise both the Council and the Commission for the decision to remove certain countries from the blacklist to the so-called 'grey list'. For further details on the delisted jurisdictions, please see Accountancy Europe's Tax Policy Update from 2 February.

While the MEPs welcomed the establishment of the list, they raised concerns on transparency regarding the criteria employed to decide on the removal of countries such as Panama from the blacklist. They called for more transparency and information on the screening process to be made available to the Parliament.

Presidency, Commission defend the list against stark criticism

During the hearing, a representative of the Bulgarian Presidency applauded the list for encouraging several jurisdictions to commit reform their tax systems in order to avoid being listed. She reminded that this is the list's main objective – to act as a disincentive and to encourage reform, rather than merely to name and shame.

The Council's Code of Conduct Group has subsequently agreed to publish the reform commitment letters sent by third countries to EU member states. The MEPs had asked to see the letters to see how concrete the commitments are.

Commissioner Phil Hogan, speaking on behalf of **Commissioner Moscovici** who could not make it for the hearing, stressed that the eight removed jurisdictions had committed to satisfactory reforms. Moreover, he reminded that being grey-listed means that the jurisdictions on that list will be subject to a stringent monitoring process to ensure that they follow up on their political commitments.

55 jurisdictions have already made reform commitments, demonstrating the list's effectiveness. Finally, he reminded that the EU list does not include EU member states since the list's scope is strictly to deal with third jurisdictions.

MEPs in the offensive

Some highlights from MEP interventions include the following:

- **Theodor Dumitru Stolojan (EPP/ROM):** submitting a letter of commitment should not be sufficient for being removed from the blacklist. Concrete measures should be required first
- **Pervenche Beres (S&D/FRA):** Panama being removed from the list so swiftly undermines the credibility of the list. EU member states should also be included. The European Parliament should be explained why a jurisdiction is removed from the list
- **Petr Jezek (ALDE/CZE):** so many jurisdictions being removed so soon after the list's publication undermines its credibility. Detailed information on countries commitments should be made available to the Parliament. The European Parliament should be briefed on the criteria used for delisting
- **Sven Giegold (Greens-EFA/GER):** it is not clear why some countries are on the list and some are not. He asked for clarifications on the screening criteria. Asked why Brazil and Georgia are not even on the grey list
- **Peter Simon (S&D/GER):** parliaments are usual held accountable on their transparency – why is that not the case with the assembly of EU member states that is the Council. The Council has failed on transparency
- **Jeppe Kofod (S&D/DEN):** asked what commitments, concretely, the Council received from the removed eight jurisdictions, what sanctions will be introduced if they fail to follow up on their commitments, and how will the Council improve its transparency
- **Molly Scott Cato (Greens-EFA/UK):** speculated on rumours that the UK is alone responsible for excluding up to 11 jurisdictions from the list, including Bermuda
- **Commissioner Phil Hogan:** replied that the Commission will, by the end of the year, provide its own assessment of the commitments made
- **Bulgarian Presidency:** on the criteria, they are available in the Council Conclusions which are open to the public (see article in the Council section below). Concerning scrutiny of EU member states, this is a tool designed to monitor third countries and therefore no EU member states are included. Finally, the Council will regularly update the list and the next ECOFIN Council on March 13 will return to this issue

European Parliament formally establishes new tax Committee – 1 March

The European Parliament has voted in a single vote to set up a special committee on tax.

The Committee will have a wide mandate, including financial crime, tax evasion and avoidance, VAT, golden visas, Brexit (as emphasised, notably, by the EPP Group), and more. It is to consist of 45 members, and have a mandate of 12 months. Details on the balance of powers, membership and rapporteurship will become available in the upcoming days.

European Parliament votes on tax intermediaries opinion – 1 March

The European Parliament Plenary has voted on the Parliament's opinion to the Commission's tax intermediaries proposal.

The opinion, drafted by the MEP **Emmanuel Maurel**, was adopted by 541 votes in favour, 33 against and 61 abstentions. The adopted text entails little changes to the version adopted at the ECON Committee – including on the provisions concerning auditors. For further details on the ECON opinion, please see Accountancy Europe's Tax Policy Update from 2 February.

MEPs express their views on the intermediaries proposal and Parliament opinion

Prior to the vote, the MEPs held a brief debate on the file. The highlights of that debate include the following:

- **Emmanuel Maurel (S&D/FRA):** the amendments proposed to the text are a large improvement. There will have to be reporting of dubious tax arrangements and this obligation is extended to auditors. All tax arrangements that are still in place, even those going back several years, should be reported. The hallmarks have also been improved

  - Mr. Maurel also emphasised that the proposal is not about stigmatising certain professions, but about dissuading tax optimisation

- **Pirkko Ruohonen-Lerner (ECR/FIN):** welcomed the report and noted that Paradise Papers showed that much remains to be done. This proposal represents a step forward, but she questioned whether it goes far enough. It must be monitored closely to ensure that the exchange of information works properly
- **Lieve Wierinck (ALDE/BEL):** noted that this is a preventative proposal as it should allow member states to anticipate tax avoidance. The cross-border approach should ensure that the abuse of differences between the national systems will become more difficult
- **Dimotrios Papadimoulis (GUE-NGL/GRE):** welcomed the report as it seeks to effectively fight tax evasion. This report avoids playing into the hands of those that wish to commit tax fraud
- **Molly Scott Cato (Greens-EFA/UK)**: noted that the leaks have demonstrated the key role of intermediaries in enabling tax evasion and avoidance. She thus welcomed the proposal and the report. The Parliament has included an obligation for auditors to report dubious schemes and called for the Commission to have access to the information
- **Ramon Jauregui Atondo (S&D/SPA):** welcomed the proposal and the report. He stressed the need for a public register to be held by the Commission and for public penalties to apply for those breaking the rules. He then noted that that unanimity in Council is preventing progress on tax issues
- **Dariusz Rosati (EPP/POL):** supports the proposals, and explained that these practices even when legal are not necessarily compliant with the spirit of the law. They also distort competition and negatively impact SMEs
- **Commissioner Moscovici:** not all tax intermediaries or arrangements are necessarily problematic. Furthermore, he reminded that the lack of reaction by the tax authorities on a particular tax arrangement does not mean that they would not act in the future. Member states will discuss the file on 13 March. The Commissioner finished by re-iterating his support to and commitment for public CBCR

Council

Council publishes guidelines for assessing performance of non-cooperative jurisdictions – February

The Code of Conduct Group has published its guidelines for assessing the performance and delivery of third countries that have made commitments for tax reforms in order to avoid being blacklisted by the EU. The

In the first phase running until 9 March, the jurisdictions that have made commitments will be invited to submit a precise timeline and description of the steps for the implementation of their commitments.

As a second phase, the jurisdictions will have to send information about each of these steps, including English translations of the draft legislation presented to their national parliaments. The Code of Conduct Group will then analyse them and give its opinion.

Finally, in the third phase, the third jurisdictions will have to send an English translation of the final measures as adopted, by an agreed deadline.

Moreover, the guidelines specify that technical assistance will be made available by the European Commission to the countries. If necessary, the countries may also hold exchanges with the Code of Conduct Group.

Periodic progress reports will be submitted to the ECOFIN Council at the end of each semester. In early 2019, the Code of Conduct Group will assess the implementation of the commitments.

Finally, the document states that day-to-day interactions between the jurisdictions and the EU will be channelled through the Commission's services, other than for political questions. For political questions, exchanges will be carried out with the Presidency of the Code of Conduct Group.

State of play of the EU list

The Council also published an overview of the state of play of the listing process. The document includes a list of all the black- and grey-listed jurisdictions, by area in which they have made commitments or are expected to make improvements.

The full EU blacklist, including explanations for the listing per each jurisdiction, is available here.

EU member states discuss US tax reform – 20 February

EU finance ministers have held a first discussion on the US tax reforms in order to develop a common approach.

Ahead of the meeting, the Bulgarian Presidency distributed a questionnaire to member states, asking them to assess the impact of the reforms on their respective economies. A similar questionnaire, but directed to the industry, was also circulated a few weeks later.

Two reform items, in particular, have emerged as potential causes of concern for Europeans. First is the proposal under which cross-border intra-group financial transactions would not be considered tax-deductible and will be taxed at a rate of 10%. The other measure is the pro-intellectual property regime for the sales and licensing of American goods and services outside the US, which would benefit from a reduced rate of 12.5%. The Commission is suspecting that this incentive would, de facto, constitute an export subsidy.

At the finance ministers' meeting, there was wide enough consensus on the negative impact that these reforms would have, and desire to develop a common reaction. However, reportedly Denmark invited the other member states to also look at the positives of the US reforms, such as the introduction of a minimum tax on US companies' activities which have gone untaxed in Europe for years. The Irish finance minister, apparently, warned the EU not to further stir international tax cooperation.

By contrast, Italy, France and Germany consider this as an opportunity for further tax integration in the EU. The German minister called for an agreement on the CCCTB. France, in turn, called for a "European tax model" that is integrated, leads to convergence and rejects 'tax dumping' by member states. France and Germany, reportedly, intend to resume their bilateral tax convergence project.

Code of Conduct Group publishes all agreed Guidance since 1998, agrees on priorities – 20 February

The Council's Code of Conduct Group on business taxation has published all of its agreed guidance from 1998 onwards. The guidance extends to over 150 pages, and includes the Group's criteria for identifying harmful tax practices in a myriad of areas.

In parallel, the Group also published its prioritisation for which agreed guidance to focus their monitoring on.

And finally, the Group agreed on its work plan under the Bulgarian Presidency, leading up to mid-2018. According to the document, the Code of Conduct Group will focus on monitoring developments in member states' administrative practices and review the tax measures announced by them under the "standstill and rollback process" for 2017. Particular priority will be given to notional interest deduction regimes.

On relationships with third countries, the Group will monitor the implementation by Liechtenstein of the amendments to its preferential regimes where the Code of Conduct Group has identified deficiencies. Particular focus will be on the tax-exempt corporate income-dividends and capital gains regime, and on the interest deduction on equity.

Moreover, the Group will monitor whether member states that have not yet modified their IP regimes to comply with the modified nexus approach have begun to amend their patent box regimes to comply by end 2018.

Finally, the Group will seek agreement on draft Council conclusions on the update of the existing EU standard provisions on good governance in tax matters. Finally, the Code of Conduct Group plans to issue a report on its progress before the end of the Bulgarian Presidency, namely, by 30 June.

European Council to discuss taxation of the digital economy – 27 February

The European Council of 22-23 March will have taxation and, in particular, the taxation of the digital economy on its agenda. The meeting brings together all heads of EU governments.

The exact angle and discussion points are not yet available. However, it is likely that the member state leaders will seek common ground on the digital tax proposals and, in particular, apply pressure on certain member states that remain sceptical about the need for EU action. It is foreseeable that, should EU member states fail to unanimously agree to proceed with EU action, the willing member states will proceed through enhanced cooperation.

The Commission's proposal on the taxation of the digital economy is currently anticipated for 21 March. This moves it one week ahead from the initially planned publication date of 28 March.

Court of Justice of the EU – Rulings

C-628/16: VAT on successive supplies of the same goods – 21 February

The Ninth Chamber of the CJEU has ruled that the first paragraph of Article 32 of VAT Directive must be interpreted as meaning that it applies to the second of two successive supplies of the same goods which gave rise to only one intra-Community transport.

Moreover, where the second supply in a chain of two successive supplies involving a single intra-Community transport is an intra-Community supply, the principle of the protection of legitimate expectations must be interpreted as meaning that the person ultimately acquiring the goods, who wrongly claimed a right to deduct input VAT, may not deduct, as input VAT, the VAT paid to the supplier solely on the basis of the invoices provided by the intermediary operator which incorrectly classified its supply.

C-398/16 and C-399/16: Advantages linked to the formation of a single tax entity – 22 February

The First Chamber of the CJEU has ruled that Articles 49 and 54 of TFEU must be interpreted as precluding national legislation pursuant to which a parent company established in a member state is not allowed to deduct interest in respect of a loan taken out with a related company in order to finance a capital contribution to a subsidiary established in another member state, whereas if the subsidiary were established in the same member state, the parent company could avail itself of that deduction by forming a tax-integrated entity with it.

Furthermore, Articles 49 and 54 of TFEU must be interpreted as not precluding national legislation pursuant to which a parent company established in a member state is not allowed to deduct from its profits capital losses derived from fluctuations in the exchange rate, in connection with the value of its shares in a subsidiary established in another member state, where the same legislation does not provide, symmetrically, for tax to be levied on capital gains derived from those fluctuations.

C-182/17: VAT on the supply of services – 22 February

The Seventh Chamber of the CJEU has ruled that the VAT Directive must be interpreted as meaning, subject to verification of the relevant facts by the referring court, that an activity whereby a company performs certain public tasks under a contract concluded between that company and a municipality, constitutes a supply of services effected for consideration and subject to VAT under that provision.

Furthermore, Article 13(1) of the VAT Directive must be interpreted as meaning that, subject to verification of the relevant matters of fact and national law by the referring court, an activity whereby a company performs certain public municipal tasks under a contract concluded between that company and a municipality, does not fall within the scope of the rule of treatment as a non-taxable person for VAT purposes laid down by that provision, if that activity constitutes an economic activity within the meaning of Article 9(1) of that Directive.

C-396/16: Debtor's obligations and VAT deductions – 22 February

The First Chamber of the CJEU has ruled that Article 185(1) of VAT Directive must be interpreted to the effect that the reduction of a debtor's obligations resulting from the final approval of an arrangement with creditors constitutes a change in the factors used to determine the amount to be deducted, for the purposes of that provision.

Moreover, the first subparagraph of Article 185(2) must be interpreted to the effect that the reduction of a debtor's obligations resulting from the final approval of an arrangement with creditors does not constitute a case of a transaction remaining totally or partially unpaid that does not give rise to an adjustment of the initial deduction, where that reduction is definitive, although that is a matter for the referring court to determine.

And finally, the second subparagraph of Article 185(2) must be interpreted to the effect that, in order to implement the option provided for in that provision, a member state is not required to make express provision for an obligation to adjust the deductions in the case of transactions remaining totally or partially unpaid.

C-387/16: Deduction of input tax – 28 February

The Fourth Chamber of the CJEU has ruled that Article 183 of VAT Directive, read in the light of the principle of fiscal neutrality, must be interpreted as precluding a reduction in the amount of interest normally payable under national law on overpaid VAT which was not refunded in due time for reasons connected to circumstances not attributable to the taxable person, such as the high amount of that interest when compared with the amount of the overpaid VAT, the period of time during which the overpayment was not refunded and the underlying reasons for this, as well as the losses actually incurred by the taxable person.

C-307/16: tax exemptions on exports – 28 February

The Fifth Chamber of the CJEU has ruled that Article 131, Article 146(1)(b) and Articles 147 and 273 of the VAT Directive must be interpreted as precluding national legislation under which, in the context of a supply of goods for export to be carried in the personal luggage of travellers, the vendor, a taxable person, must have attained a minimum level of turnover in the preceding tax year, or have concluded an agreement with a person authorised to refund VAT to travellers, where the mere failure to meet those conditions results in the definitive loss for the vendor of the exemption in relation to that supply.

C-672/16: VAT deductions and the use of property – 28 February

The Seventh Chamber of the CJEU has ruled that Articles 167, 168, 184, 185 and 187 of the VAT Directive must be interpreted to the effect that they preclude national legislation which provides for the adjustment of VAT initially deducted on the ground that a property, for which the right to opt for taxation was exercised, is regarded as no longer being used by the taxable person for the purposes of its own taxed transactions, where that property has remained unoccupied for more than two years, even though it is established that the taxable person has sought to rent it during that period.

C-76/17: Tax burden for the taxpayer on petrol export charges – 1 March

The Fourth Chamber of the CJEU has ruled that EU law, and in particular Article 30 TFEU, must be interpreted as meaning that the taxpayer, who in fact pays the charge having an equivalent effect contrary to that article, must be able to obtain reimbursement of the sums which it has paid by way of that charge, even in a situation where the payment mechanism for the charge has been designed in national legislation so that the charge is passed on to the consumer.

International

South Africa proposes to increase VAT rate, subject more foreign electronic services to VAT – 21 February

South Africa intends to propose its first VAT increase since 1993, with a raise from 14% to 15%. Furthermore, it is planned to widen the scope of foreign electronic services subject to VAT to include all services as defined in the VAT Act that are provided by means of an electronic agent, electronic communication, or the internet for any consideration. The proposal also makes changes to persons required to register, exclusions, and compliance.

NZ strikes blow for global tax clampdown as Google shifts policy – 22 February

According to Financial Times, New Zealand has persuaded Google to change its local business model. Google said it would cease booking most of its New Zealand advertising revenues in Singapore. Instead, in the future this revenue would be booked in New Zealand. The move is possibly the result of mounting pressure by governments across the globe on ‘digital companies’ such as Google to pay what is seen as their ‘fair share’ in tax.

UK targets Facebook and Google with 'fair' tax system – 22/27 February

Whilst the European Commission is pondering on its proposals for the taxation of the digital economy, EU member states continue with their national plans. The UK is within this club of countries too, as the country's Treasury is hinting at the prospect of targeted measures to ensure that 'digital companies' pay their 'fair share' in taxes.

A recent stakeholder consultation in the UK was held in this regard. Reportedly, the UK government would prefer to achieve common ground on the matter at the OECD level, but is ready to move ahead unilaterally if international progress is judged too slow.

The Treasury's plans and the stakeholder consultation have already stirred some debate in the UK. Whilst some see digital sector specific measures as necessary tools to curtail the power of multinational tech giants, others warn about the potential unintended consequences of such measures.

OECD

Serbia joins Inclusive Framework on BEPS – 19 February

Serbia has joined the Inclusive Framework on BEPS as its newest members, bringing to 112 the total number of countries and jurisdictions participating in the project. Members of the Inclusive Framework work together with other OECD and G20 countries on implementing the BEPS package consistently and on developing further standards to address remaining BEPS issues.

OECD releases consultation document on misuse of residence by investment schemes to circumvent the Common Reporting Standard – 19 February

As part of its CRS loophole strategy, the OECD has released a consultation document that assesses how schemes such as "residence by investment" (RBI) or "citizenship by investment" (CBI) are used in an attempt to circumvent the CRS.

The consultation document also identifies the types of schemes that present a high risk of abuse, reminds stakeholders of the importance of correctly applying relevant CRS due diligence procedures in order to help prevent such abuse, and explains next steps the OECD will undertake to further address the issue, assisted by public input.

The deadline for providing comments is 19 March.

Pascal Saint-Amans calls for caution on unilateral digital taxes – 27 February

The OECD's tax Director, **Pascal Saint-Amans**, has warned countries to proceed cautiously with unilateral measures to tax the digital economy.

Mr. Saint-Amans insists that this matter should be resolved at an international level and in a coordinate manner. He maintains that any long-term solution will take time since "you need to change tax treaties, you need to adopt transfer pricing rules" – a process that is likely to take several years. Any interim measures should be as little disruptive as possible.

This puts Mr. Saint-Amans at odds with the European Commission and certain EU member states that are proceeding with targeted interim measures whilst waiting for an international long-term solution.

State Aid

European Commission publishes letter it sent to Luxembourg as part of its Amazon ruling – 26 February

The European Commission has published the non-confidential version of the final negative decision adopted on 4 October 2017, which concluded that Luxembourg granted EUR 250 million worth of illegal state aid in the form of tax benefits to Amazon. In the Commission's assessment, Luxembourg allowed Amazon to pay four times less tax than other local companies subject to the same national tax rules.

For further details on the Commission decision, please see Accountancy Europe's Tax Policy Update from 13 October 2017.

Other News

NBIM publishes report on expectations for investors, including public CBCR – 13 February

Norges Bank Investment Management (NBIM) has published a report presenting its work towards more sustainable tax conduct by companies and investors. It also establishes its expectations for companies' behavior, including being transparent on their tax strategies and in due time introducing public CBCR.

Overall, NBIM calls for investments for "sustainable business practices to create long-term returns".

ECIPE rejects Commission plans for the taxation of the digital economy – 5 March

The think tank European Center for International Political Economy (ECIPE) has published a report that criticises the European Commission's expected plans for the taxation of the digital economy.

Titled *Digital Companies and Their Fair Share of Taxes: Myths and Misconceptions*, the report questions the soundness of the Commission's arguments for taxing large digital multinationals. Moreover, it argues that taxes specific to digital companies would violate tax efficiency and neutrality, and undermine digitalisation, European integration, and the Digital Single Market

Events

- 22/03/2018, ***Ninth Bruges European Business Conference***, Deloitte and College of Bruges, Bruges. Source
- 25/04/2018, ***The future of European taxation in a global context***, Institut Friedland, Brussels. Source