ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

5 – 16 March

HIGHLIGHTS

- OECD: new tax disclosure rules for advisors proposed – 9 March
- Council: member states agree on tax intermediaries Directive, make adjustments to list of non-cooperative jurisdictions – 13 March
- European Parliament: Plenary votes on composition of new tax Committee – 14 March
- OECD: interim report on the taxation of the digital economy published – 16 March

European Commission

European Commission pinpoints seven member states for enabling tax avoidance – 7 March

The European Commission has labelled seven EU member states for facilitating "aggressive tax planning" (ATP) as part of its European Semester Winter Package.

It bases these conclusions on a study that it published together with the usual country-specific reports and other material that European Semester Packages tend to consist of. The study is titled *Aggressive tax planning indicators* and as the name implies, it sets out criteria to assess to what degree a country's tax system and rules enable ATP. It then applies these criteria to each of the EU member states, and concludes that seven out of them - Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and The Netherlands – have tax systems that are particularly prone towards ATP practices.

In Commissioner Moscovici's words, the purpose is not so much to name and shame as it is to encourage further progress in the countries concerned. He emphasised that this is the first time the Commission is using the European Semester as a vehicle to tackle ATP practices in EU member states.

Civil society applauds, labelled member states outraged

Expectedly, segments of the civil society and certain MEPs have welcomed what they see as the Commission's naming and shaming approach. Some commentators refer to the move as the Commission opening the debate on tax competition in the EU.

In response, the seven labelled member states – with the charge led by Luxembourg – have expressed deep dissatisfaction at Commissioner Moscovici about his move. Luxembourg argued, notably, that addressing ATP goes

beyond the scope of the European Semester. Belgium, for its part, accused the Commission of double standards given that France had not been named. France has been reluctant to change its patent box regime, seen as potentially harmful.

Time will show how far the outrage will go. According to an unnamed official, Commissioner Moscovici was already not too popular amongst the Council's diplomatic spheres, and even less so now.

What European Semester?

The European Semester provides a framework for the coordination of economic policies across the EU. It allows EU countries to compare and discuss their economic and budget plans and monitor progress at specific times throughout the year.

During the European Semester, EU member states align their budgetary and economic policies with the objectives and rules agreed at the EU level, covering three areas of economic policy coordination:

- structural reforms, focusing on promoting growth and employment in line with the Europe 2020 strategy
- fiscal policies, in order to ensure sustainability of public finances in line with the Stability and Growth Pact
- prevention of excessive macroeconomic imbalances

For this purpose, each Semester consists of country-specific reports, a Communication summarising the main findings and conclusions of the Semester, and special monitoring reports, if relevant, in the context of the macroeconomic imbalances procedure.

Commission publishes comments received on taxation of digital economy, hosts roundtable discussions with stakeholders – 7/14 March

Ahead of its upcoming proposal on 21 March, the European Commission has published all the responses received to its consultation on taxation of the digital economy. On top of the individual responses, the Commission also published a helpful statistical overview of the responses.

A total of 416 responses were submitted, including 121 comment letters. 82% of the respondents stated that international tax rules will need to be changed, and 65% maintain that current rules do not enable fair competition between digital and traditional firms. Earlier in March, the Commission also organised meetings with representatives of digital businesses that will be affected by the Commission's upcoming proposals.

The Commission's proposal, of which further details have been leaked, will consist of two Directives: one notably establishing the details of a digital permanent establishment in order to provide for a long-term comprehensive solution. The other is a proposal to allow member states to tax the turnover of digital businesses in the short term. The turnover tax would be set at 3% according to current projections, raising approximately EUR 5 billion. However, the tax rate may yet change ahead of the actual publication of the proposal.

Finally, several EU member states have re-iterated their objection to the Commission plans, especially the short term measures. If member states fail to reach a unanimous agreement, it is possible that the supporting member states take the road of enhanced cooperation instead.

Commission publishes monthly infringements package, including decision on VAT on yachts against Cyprus, Greece and Malta – 8 March

The European Commission has published its latest monthly infringements package. The package includes the opening of infringement procedures against Cyprus, Greece and Malta for not levying the correct amount of VAT on the provision of yachts. This was one of the practices revealed, notably, in the Paradise Papers leaks.

Other tax elements of the monthly infringements package include:

- Commission requesting Bulgaria to change its VAT rules for companies trading in fuel and for non-business use of company assets
- Commission requesting Germany to align its rules with EU law regarding a VAT scheme made available to farmers
- And Commission requesting Poland to align its rules with EU law regarding excise duty on energy products

European Parliament

Vote on composition of TAX3 – 14 March

The European Parliament has voted on the formal composition of its new TAX3 Committee.

The balance of power of all 45 members (excluding substitutes, who do not have the right to vote although they may participate in the Committee's work otherwise) in the Committee is as follows:

- 14 EPP (centre-Right)
- 12 S&D (centre-Left)
- 4 ECR (conservative nationalists, including UK Tories)
- 4 ALDE (liberals)
- 3 Greens-EFA (greens)
- 3 GUE-NGL (far-Left)
- 2 EFDD (Eurosceptics, including UKIP)
- 2 ENF (far-Right)
- 1 NI (non-aligned, communist)

The Committee will vote on 22 March on the distribution of responsibilities, including chairmanship and co-rapporteurs. The current rumours in town indicate the following:

- Committee Chair: Petr Jezek (ALDE/CZE)
- Co-rapporteur 1: Jeppe Kofod (S&D/DEN)
- Co-rapporteur 2: Ludek Niedermayer (EPP/CZE)
- S&D Coordinator: Peter Simon (S&D/GER)
- EPP Coordinator: Dariusz Rosati (EPP/POL)
    - EPP Deputy Coordinator: Tom Vandenkendelaere (EPP/BEL)

If proven true, the above information indicates that ALDE will no longer be the co-rapporteur. Instead, EPP will be the co-rapporteur together with S&D. As a reminder, all previous tax special Committees (TAXE I & II, PANA) had an EPP Chair and S&D/ALDE as co-rapporteurs.

It is possible that especially after the catastrophic vote in PANA Committee last autumn, EPP realised the limited influence that it has by holding the Committee's chairmanship. Therefore, they have pushed to be the actual co-rapporteur. ALDE, in turn, will be content to have the chairmanship of another Committee, and a politically influential one at that.

European Parliament adopts its position on C(C)CTB – 14/15 March

The European Parliament has voted on its position on the CCCTB and CCTB proposals, led by the MEPs **Alain Lamassoure (EPP/FRA)** and **Paul Tang (S&D/NLD)**, respectively.

The report on the CCCTB was adopted with 438 votes in favour and 145 against. The CCTB report, in turn, was adopted with 451 votes in favour and 141 against. The fairly high number of rejections is most likely a reflection of MEPs from countries most critical of C(C)CTB (e.g. Ireland, Cyprus, Malta et al.) voting against the initiative.

There were no major surprises to previous versions of the European Parliament's text. Thus the final opinions states that after seven years, the C(C)CTB should be applicable to all companies, not only those with a turnover of EUR 750 million and above.

The opinions also establish the concept of 'digital presence', in order to enable the taxation of businesses with more digital business models. Moreover and also to address digital business models, the MEPs introduced the collection and use of personal data of online platform and service users as part of the allocation formula which currently consists of labour, capital and sales only.

Finally, an amendment by the Greens-EFA Group calling for a minimum European tax rate was rejected. The MEP **Eva Joly (Greens-EFA/FRA)** blamed the conservatives and liberals for this.

The European Parliament may only issue its non-binding opinion on C(C)CTB. As with all tax files, the actual decision will be made by member states unanimously – which explains why the file remains stalled in the Council.

Final debate in Plenary on C(C)CTB

Ahead of the vote, MEPs held a final debate on the C(C)CTB, with the participation of **Commissioner Moscovici**. Below are some of the highlights form this debate:

- Commissioner **Moscovici:** the C(C)CTB proposals would prevent loopholes between EU member states and thus prevent transfer pricing and aggressive tax avoidance. On digital taxation, he accepted that the tax system is outdated. He thus re-iterated the Commission's intention to publish, on 21 March, two proposals for taxing the digital economy (one on a long-term solution, the other on a short-term measure). He welcomed that the Presidencies (Bulgaria and later Austria) have reportedly made this issue a priority, and aiming for an agreement before the end of this year
- **Alain Lamassoure (EPP/FRA):** France is already introducing legislation to tax internet giants such as Facebook and Google. The key will be to ensure that these companies do not simply pass on the tax to the end-consumer. Moreover, now is the right time for tax harmonization at the EU level
- **Paul Tang (S&D/NLD):** corporate tax rates have decreased since the crisis, and the only tax sovereignty left for countries is to decrease their corporate tax rates even further. C(C)CTB would, however, change the nature of tax competition in Europe and put an end to profit shifting. Large member states such as France and Germany must put pressure on smaller ones (Ireland, Cyprus, Luxembourg et al.) that keep on resisting tax reforms

- **Evelyn Regner (S&D/AUT):** the upcoming Austrian Presidency should make an agreement on the taxation of digital economy a priority
- **Sander Loones (ECR/BEL):** argued that small countries need to be able to compete with larger ones, and that EU member states should retain national sovereignty on tax. He expressed his opposition to the proposals, which he maintained would lead to companies leaving small countries for larger ones
- **Dariusz Rosati (EPP/POL):** CCCTB would facilitate the operation of the single market. He is, however, opposed to the harmonisation of tax rates. This would be impossible until there is a uniform level of economic development across the EU
- **Petr Jezek (ALDE/CZE):** multinationals pay less tax than before the 2008 crisis with effective tax rates falling by 9%. C(C)CTB would help close tax loopholes. Morover, digital businesses should be taxed just like more traditional businesses are
- **Matt Carthy (GUE-**NGL/IRL): criticized the C(C)CTB proposals for being EU-only, not global, which he fears will incentivize multinationals leaving the EU. He also called for Ireland to end marketing the country as a tax avoidance hub and to put an end to its overreliance on corporation tax receipts of a few multinationals

MEPs vote on Brexit resolution, link future deal to good tax behaviour – 14 March

The European Parliament has adopted its position on an association agreement for future EU-UK relations. Contrary to a previous European Parliament's Brexit resolution, it now explicitly addresses the fuelling of global tax competition by the UK's overseas territories.

According to procedure, any future agreement with the UK needs the approval of the European Parliament.

Council

Council publishes letters sent to third countries and letters of commitment received – 6/12 March

EU member states have decided to publish the letters sent to third countries, as well as the letters of commitment received from these same third countries, as part of the 'EU tax haven' listing process.

The decision to publish the letters follows a string of criticism from the European Parliament and civil society. These stakeholders have accused the member states of listing and delisting jurisdictions on an arbitrary or political basis, rather than through the use of objective criteria. They also fear that many of the political commitments submitted by third countries are lax or too vague.

The letters sent to the third jurisdictions are available here, including a separate letter sent to the US Virgin Islands. For the letters of commitment received from each of the jurisdictions, please see below – in no particular order:

Greenland: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-24/en/pdf

Albania: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-25/en/pdf

San Marino: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-23/en/pdf

Mauritius: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-22/en/pdf

Jersey: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-21/en/pdf

Cook Islands: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-20/en/pdf

Aruba: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-19/en/pdf

Uruguay: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-18/en/pdf

Tunisia: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-17/en/pdf

Qatar: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-15/en/pdf

Serbia: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-16/en/pdf

Panama: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-14/en/pdf

Morocco: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-12/en/pdf

New Caledonia: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-13/en/pdf

Isle of Man: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-11/en/pdf

Guernsey: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-10/en/pdf

Bosnia & Herzegovina: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-9/en/pdf

Peru: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-8/en/pdf

Oman: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-7/en/pdf

Nauru: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-6/en/pdf

Liechtenstein: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-5/en/pdf

FYR Macedonia: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-4/en/pdf

Faroe Islands: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-3/en/pdf

Belize: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-2/en/pdf

Hong Kong: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-27/en/pdf

Curacao: http://data.consilium.europa.eu/doc/document/ST-6972-2018-ADD-26/en/pdf

March Ecofin: Council agrees on tax intermediaries Directive, makes adjustments to list of non-cooperative jurisdictions – 13 March

Member states have reached a unanimous political agreement on the tax intermediaries Directive. The agreement follows a mere eight months of negotiations.

What was it about again?

As a reminder, the Directive obliges tax advisors (and in certain cases, the taxpayers themselves) to disclose information about tax arrangements that fulfil a set of criteria ('hallmarks') to the tax administrations. The tax administrations would, then, automatically exchange this information between each other.

The objective is to enable tax administrations and governments to identify potential loopholes and unintended use of tax legislation in a timely manner. This will allow them to plug those loopholes before exploited, should they choose to.

Compared to the initial Commission proposal, the text has gone through substantive changes. For example, the reporting deadline is now set at 30 days, as opposed to the initially proposed five days. Moreover, the hallmarks now appear in some respects even more ambiguous than before. For example, the original proposal stated that in order to be reportable, an arrangement's "main benefit" must be to obtain a tax advantage. The approved text, however, states that it simply has to be "one of the main benefits".

Furthermore, the Commission may no longer amend the list of hallmarks independently. Rather, it must periodically report to member states whether the list of hallmarks is fit for purpose, and this not being the case to propose amendments to the list.

Final point of contention – hallmark C.1

During the negotiations in past months, member states quickly achieved progress in a number of areas. However, hallmark C.1 caused headaches until the last moments, and nearly destroyed the political agreement.

Hallmark C.1 establishes that an arrangement becomes reportable if it involves a low or zero corporate tax jurisdiction, or a jurisdiction whose statutory corporate tax rate is below half of the EU average.

This provision was particularly strongly opposed by UK, Ireland, Cyprus, Malta, Hungary, Romania, Estonia, Croatia, Latvia and Lithuania. They feared, amongst other things, that this provision would set a dangerous precedent leading to an eventual EU minimum corporate tax rate. On the other side of the barricade, France, Spain, Italy and Germany were insisting to keep the hallmark as it is.

The final compromise was not loved by anyone, but could be accepted. It retains references to the zero or near zero tax rate, but does not include rates below any given EU average. Moreover, C.1 can no longer alone trigger the reporting obligation, and instead other criteria must apply in order for such an arrangement to become reportable.

Next steps – implementation

Member States will have until 31 December 2019 to transpose the new Directive into national laws and regulations.

The new reporting requirements will apply from 1 July 2020. Member states will be obliged to exchange information every three months, within one month from the end of the quarter in which the information was filed. The first automatic exchange of information will thus be completed by 31 October 2020.

List of non-cooperative jurisdictions – three jurisdictions removed, three added

The other major tax item on the ECOFIN's agenda was new changes to the EU list of non-cooperative jurisdictions. Indeed, the Council added the Bahamas, Saint Kitts and Nevis, and the US Virgin Islands to its blacklist. See here for a separate letter sent to the US Virgin Islands.

The three newly added jurisdictions had been given more time to propose their political commitments for tax reform, due to being hit badly by a hurricane in summer 2017. However, it appears that their subsequent commitments have either been deemed insufficient, or were not delivered to the Council at all.

Moreover, the member states removed Bahrain, the Marshall Islands, and Saint Lucia. These three were moved to the so-called grey list, where they will remain until they deliver on their commitments – or failing to do so, will be returned to the blacklist.

Finally, the EU expects further clarifications from Turkey and Caicos Islands by 31 March. Overall, nine jurisdictions remain on the blacklist: American Samoa, Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago, and the US Virgin Islands.

Court of Justice of the EU – Rulings

C-159/17: right to deduct value added tax – 7 March

The Tenth Chamber of the CJEU has ruled that Articles 167 to 169 and 179, Articles 213(1) and 214(1), and Article 273 of the VAT Directive do not preclude national legislation which allows tax authorities to refuse a taxable person the right to deduct VAT when it is established that, on account of the alleged infringements committed by that person, the tax authorities could not have access to the information necessary to establish that the substantive requirements giving rise to the right to deduct input VAT paid by that taxable person have been satisfied or that that person acted fraudulently in order to enjoy that right, a matter which it is for the referring court to ascertain.

C-355/16: Taxation of unrealised gains on significant shareholdings – 15 March

The First Chamber of the CJEU has ruled that where a situation does not come within the scope ratione personae of the notion of 'self-employed persons', within the meaning of the EU-Switzerland Agreement concerning the free movement of persons, signed in Luxembourg on 21 June 1999, the terms of that agreement must be interpreted as not precluding the legislation of a State party to that agreement, which, when a natural person transfers his residence from that State to another State party to that agreement, while maintaining his economic activity in the first of those two States, without undertaking every day, or at least once a week, a journey from the place of his economic activity to that of his residence, provides for the immediate taxation of the unrealised capital gains on significant shareholdings held by that person in companies governed by the laws of the first State at the time of the transfer of residence and which allows deferred recovery of the tax due only if suitable guarantees to ensure recovery of the tax are provided, whereas a person who also holds such shareholdings, but who continues to reside in the territory of the first of those States, need pay tax only at the time of transfer of those shareholdings.

International

Switzerland publishes position on taxation of the digital economy – 8 March

Switzerland has published its opinion on the taxation of the digital economy.

Reportedly, the opinion recognises that new business models warrant changes to the tax system. Switzerland prefers an internationally coordinated solution that taxes profits where generated. Moreover, if a country does choose to opt for short-term measures, these must be designed in a manner that is as targeted and as narrow as possible, be applied to both domestic and foreign companies and be limited in time.

For example, this could include an excise tax that is limited to the digital advertising of large companies with an annual consolidated turnover exceeding EUR 750 million and that contains a sunset clause. This is, broadly, in line with what the European Commission is planning to propose.

UK revises its position on the taxation of digital economy – 13 March

The UK government has published an updated position paper in relation to corporate tax and the digital economy as a part of Chancellor Philip Hammond's Spring Statement. The paper does not, reportedly, set out any conclusions, or a clear way forward, but builds on a previous paper from November 2017.

Interestingly, the paper recognises that internationally coordinated long-term solutions will be difficult to achieve, and therefore the prospect of interim measures should be considered. This is in line with the position of the European Commission.

OECD

OECD proposes tax disclosure rules for advisors – 9 March

The OECD has issued new model disclosure rules that require lawyers, accountants, financial advisors, banks and other service providers to inform tax authorities, within 30 days, of any schemes they put in place for their clients to avoid reporting under the Common Reporting Standard (CRS) or prevent the identification of the beneficial owners of entities or trusts.

The disclosure rules consist of five main parts, namely:

- A description of the Arrangements that are required to be disclosed (i.e. the hallmarks)
- A description of the persons required to disclose such Arrangements (i.e. the Intermediaries that are subject to reporting obligations under the rules)
- A trigger for the imposition of a disclosure obligation (i.e. when an obligation to disclose crystallises under the rules and any exceptions from reporting)
- A description of what information is required to be reported
- Appropriate penalties or other mechanisms to address non-compliance

OECD releases new peer reviews on implementation of BEPS 14 on tax dispute resolution – 12 March

The OECD has published eight new stage 1 peer review reports that highlight how well jurisdictions are implementing the BEPS Action 14 minimum standard (dispute resolution).

This third round of reports relate to implementation by the Czech Republic, Denmark, Finland, Korea, Norway, Poland, Singapore and Spain. A document addressing the implementation of best practices is also available on each jurisdiction that chose to opt to have such best practices assessed.

The eight reports contain over 215 specific recommendations relating to the minimum standard. In stage 2 of the peer review process, each jurisdiction's effort to address the recommendations identified in its stage 1 peer review report will be assessed.

Furthermore, the OECD is also calling for taxpayers to submit input for the fifth round of Action 14 stage 1 peer reviews of Estonia, Greece, Hungary, Iceland, Romania, Slovak Republic, Slovenia and Turkey. Input is particularly invited on specific issues relating to access to MAP, clarity and availability of MAP guidance and the timely implementation of MAP agreements for each of these jurisdictions. The deadline for comments is 9 April 2018.

OECD publishes interim report on the taxation of the digital economy – 16 March

The OECD has published its long-awaited interim report on the taxation of the digital economy. The report is expected to guide OECD's work on a comprehensive solution for taxing the digital economy, with final proposals expected in 2020, with an update to G20 in 2019. The report was approved by 113 jurisdictions that form the so-called Inclusive Framework.

What are the main features?

There were high hopes for the interim report. Namely, that it would deter certain countries and jurisdictions from moving ahead with unilateral measures and stick to an internationally coordinated approach. It appears that these hopes will be disappointed, however, as the report falls short of a concrete consensus and proposals.

Indeed, in some sections the report indicates clearly when certain countries simply do not agree. For example, the US has indicated earlier that there is no need for specific measures for digital businesses. The US is happy to discuss tweaking existing international tax rules defining permanent establishments and the profit attribution standards, but insists that these should apply to all businesses, and not only digitalised ones.

The countries did agree, however, to study international tax concepts with the view of assessing whether improvements can be made. This would include a review of the international tax rules on nexus to tax and profit allocation, including a consideration of the impacts of digitalization on the economy. Furthermore, three common features of highly digitalized businesses were identified, namely:

- cross-jurisdictional scale without mass
- a heavy reliance on intangible assets, especially IP
- the importance of data, user participation, and their synergies with IP

At the same time, the countries disagree on whether and to what extent these features contribute to value creation and should therefore be reflected in international taxation rules on profit allocation.

What about interim measures?

Although the report states that there is no consensus on interim measures, countries interested in such measures agreed to some common aspects for designing these rules. These principles include (and are broadly in line with the European Commission's plans):

- any interim measure must comply with tax treaties and other international obligations. Thus, the tax cannot be an income tax and EU non-discrimination rules must be complied with
- the measures must be temporary and targeted to internet advertising and online intermediation service. This means, namely, platforms that facilitate the exchange of goods or services between third parties. By contrast, the delivery of goods, even if the contract is concluded online, should not be covered
- minimise potential negative impacts on smaller businesses

Three categories of jurisdictions

OECD's tax director, **Pascal Saint-Amans**, has stated that the positions of different countries fall into three broad groups:

- those that see no need to change the existing system, typically smaller economies
- those that believe there are pressures on the existing international tax standards because of the unique features of the digital economy and that seek change
- and those countries, such as the US, that are open to discussing improvements to the international tax rules, but only if the discussion is not limited to taxation of digital firms

Other News

UEAPME GIVES DAMNING VERDICT TO COMMISSION'S PROPOSAL ON a Single EU VAT system – 9 March

UEAPME – representing European SMEs – has strongly criticised the European Commission's proposal for the first steps towards a single EU VAT system.

UEAPME feels that forcing companies to apply up to 28 different VAT rates for B2B deliveries within the EU will create unjustified additional costs and risks for SMEs. In such cases, SMEs rely on easy accessible and updated information about applicable VAT rates and should not be made responsible if such information is not correct. UEAPME also doubts whether SMEs will benefit from the suggested status of a Certified Taxable Person (CTP) and asks for easy and inexpensive access to such a status. This status would allow companies to receive deliveries VAT free, and SMEs would suffer from a significant economic disadvantage if only larger companies can afford a CTP.

FT: Multinationals pay lower taxes than a decade ago, move to a destination-based corporate tax system – 11/12 March

Financial Times argues that multinationals are paying lower corporate taxes than before the 2008 financial crisis.

According to Financial Times' analysis, despite government efforts to tackle budget deficits and reform tax systems, multinationals pay in average 2% less in terms of effective corporate tax rates. This represents a 9% fall in their tax burden. The data does not look into other taxes than corporate ones.

As a solution, FT proposes a destination-based corporate tax system, where "companies' global profitability could be attributed to countries for tax purposes according to where their sales take place. Alternatively, each country could charge a tax on local sales, but give companies tax relief for the costs incurred locally."

MEP Questions & Answers

VAT fraud scandal in the United Kingdom – 15 February

The European Commission has replied to a question asked by the MEP **Franck Proust (EPP/FRA)** with regard to VAT fraud scandal in the UK.

In his question, Mr. Proust accuses the UK of turning a blind eye to VAT fraud that has enabled "extremely cheap" Chinese products to flood the single market, costing up to EUR 3 billion in lost customs duties. He asks the Commission how it will address the issue, whether additional measures will be needed after Brexit, and whether it has accounted fraud in the amount that the UK would be expected to pay the EU as part of Brexit.

In his reply, **Commissioner Oettinger** (EU budget) states that the Commission has developed in cooperation with member states a EU common risk criteria to ensure financial risks are addressed in an equivalent manner to reinforce customs border controls. An Implementing Act setting out these criteria is scheduled for adoption in the first half of 2018. He also refers to recent Commission proposals to tackle VAT fraud. Finally, Commissioner Oettinger stresses that the case referred to by Mr. Proust does not fall under the scope of the Brexit negotiations.

Effects of including South Korea on the EU tax haven list – 15 February

The European Commission has replied to a question asked by the MEP **Ramón Luis Valcárcel Siso (EPP/SPA)** with regard to the possible impact of including South Korea on the EU list of non-cooperative jurisdictions.

In his question, Mr. Valcárcel Siso expresses concern over the EU blacklisting one of its major third trade partners, and asks the Commission why this was the case and how this might impact businesses benefitting from this trade relation. In his reply, **Commissioner Moscovici** reminds that the listing process is handled by member states, and on the basis of objective criteria. South Korea's initial response was deemed insufficient, hence it was initially blacklisted. However, it has now been removed from the blacklist. Overall, for the listing process there is no link with the EU-Korea free trade agreement. South Korea was treated the same way as all other jurisdictions, regardless of its economic weight and trade links with the EU.

Carbon tax at the EU's borders – 15 February

The European Commission has replied to a question asked by the MEP **Jérôme Lavrilleux (EPP/FRA)** with regard to carbon tax at EU's borders.

In his question, Mr. Lavrilleux asks the Commission whether it will introduce a carbon tax within the Customs Union, and whether such a tax is legally possible given the EU's multilateral agreements. In his reply, **Commissioner Canete** (climate action) maintains that the design and implementation of a carbon border tax would be extremely complex, with high administrative burden, raising issues with regard to the compatibility with WTO rules.

The Maltese scheme involving the sale of passports to third-country citizens – 16 February

The European Commission has replied to a question asked by the MEP **Dariusz Rosati (EPP/POL)** with regard to the Maltese golden passport scheme.

In his question, Mr. Rosati expresses concerns over Malta granting citizenship to dubious personalities and potentially enabling money laundering. He asks the Commission what action it will take with regard to the Maltese practice. In her reply, **Commissioner Jourova** (justice) emphasizes that member states should ensure that there is

a genuine link between the investor and the country that grants citizenship. The Commission is monitoring the application of investor citizenship schemes.

Therefore, the Commission will produce by the end of 2018 a report on national schemes granting EU citizenship to investors. The report will describe the Commission's action in this area, current national law and practices and provide some guidance to member states. The fact-finding preparatory work for this report will look at, among other things, the due diligence and security checks carried out on applicants for investor citizenship.

Factoring tax accountability into the next reform of the Procurement Directive – 2 March

The European Commission has replied to a question asked by the MEP Pirkko Ruohonen-Lerner (ECR/FIN) with regard to tax accountability as part of the Procurement Directive (PD).

In her question, Ms. Ruohonen-Lerner calls for tax accountability to be taken into account in public procurement decisions, and for this to be factored in the PD. She therefore asks the Commission when the PD will be revised, and how it will ensure that the Commission's recent work against tax avoidance and evasion will be factored in.

In her reply, **Commissioner Bienkowska** (Internal Market, industry, entrepreneurship and SMEs) states that the Commission is not planning new legislative initiatives on public procurement anytime soon. She stresses, however, that the existing rules provide for a stringent framework to prevent and detect conflicts of interest, fraud and corruption in public procurement. For example, an economic operator shall be excluded from participation in a procurement procedure when it breaches its obligations relating to the payment of taxes and where this has been established by a judicial or administrative decision having final and binding effect.

Mercosur and the Paradise Papers – 7 March

The European Commission has replied to a question asked by the MEP **Molly Scott Cato (Greens-EFA/UK)** with regard to MERCOSUR and Paradise Papers.

In her question, Ms. Scott Cato refers to several members of MERCOSUR governments being accused of tax evasion. Given that the EU is currently negotiating an Association Agreement with MERCOSUR, she asks the Commission how it will prevent government officials from engaging in tax evasion, whether the Commission will stall the negotiations with MERCOSUR unless the tax evasion concerns are addressed, and whether the EU will blacklist countries whose ministers are involved in tax evasion.

In her reply, **Vice-President Mogherini** (external relations) confirms that the Association Agreement with MERCOSUR will include relevant clauses aimed at increased cooperation on tax matters on the basis of the international standards on good tax governance, such as transparency and exchange of information, fair tax competition and the minimum standards on BEPS. She also reminds that the relevant MERCOSUR countries have subscribed to all relevant frameworks, including the Inclusive Framework on BEPS and the OECD Global Forum on Tax Transparency. Finally, additional clauses of the Agreement will address money laundering and illicit activities.

Reduced VAT rates – 9 March

The European Commission has replied to a question asked by the MEP **Tom Vandenkendelaere (EPP/BEL)** with regard to reduced VAT rates.

In his question, Mr. Vandenkendelaere calls on the Commission to allow for "repair work" to enjoy from reduced VAT rates. In his reply, **Commissioner Moscovici** refers to the recently proposed reform of EU VAT rates regime. The VAT rates proposal would allow member states to apply a reduced VAT rate to repair services other than those

currently listed in Annex III to the VAT Directive. Thus, only repair services falling under a negative list which will replace Annex III would be subject to the standard rate of a minimum of 15%.

US tax reform affecting EU citizens and SMEs – 14 March

The European Commission has replied to a question asked by the MEPs **Sophia in 't Veld (ALDE/NLD)** and **Thierry Cornillet (ALDE/FRA)** with regard to US tax reform, and its impact on EU citizens and SMEs.

In their question, the MEPs refer to the US citizens-based tax system as well as the recently proposed US tax reforms, in particular the global intangible low-taxed income (GILTI). They fear that the administrative burdens and reporting requirements that GILTI, FATCA and other obligations pose on European SMEs could even lead to bankruptcies. They therefore ask the Commission what it intends to do about this situation.

In his reply, **Commissioner Moscovici** reminds that such tax law decisions are taken nationally, and there is little that the Commission can do about it. However, the Commission is currently analysing the legal and economic impacts of the recent US tax reform. On GILTI specifically, the Commissioner reminds that the measure would apply only to US controlled foreign companies.

VAT scheme for the sale of building land – 16 March

The European Commission has replied to a question asked by the MEP **Jean Arthuis (ALDE/FRA)** with regard to VAT on the sale of building land.

In his question, Mr. Arthuis argues that the VAT Directive makes it possible for a margin VAT scheme to be applied to the sale of property purchased for resale by a taxable person who could not claim back VAT on that purchase. However, this article does not appear to apply when the original purchase was VAT-exempt. He asks the Commission to confirm whether this is indeed the case.

In his reply, **Commissioner Moscovici** confirms that the supply of buildings after first occupation and building land is exempt from VAT. Where a taxable person purchases such a building or building land, the purchase price may include an element of VAT which the taxable person is not able to deduct. If on resale, the taxable person must tax based on the selling price, double taxation could accordingly arise. Thus, member states may provide that the taxable amount in respect of such buildings or building land shall be the difference between the selling price and the purchase price.

How complete is the European list of tax havens? – 16 March

The European Commission has replied to a question asked by three French ENF MEPs with regard to the EU list of tax havens.

In their question, the MEPs ask the Commission why no EU member state is listed on the EU's list of non-cooperative third countries, what sanctions will be imposed on blacklisted jurisdictions, and whether the Commission will focus on the commitments of countries on the grey list given a prospective EU enlargement into the Balkans.

In his reply, **Commissioner Moscovici** points out that the blacklist is part of the EU's external strategy, and as such only applies to non-EU jurisdictions. On sanctions, the Commissioner reminds that cross-compliance measures for the allocation of EU funds have been included in certain legislative acts. Thus, a non-cooperative jurisdiction can no longer be used to channel EU funds, and only funding for physical projects is still possible. Moreover, the member states undertook to implement penalties at national level, in particular administrative and legislative penalties.

Finally, the Commissioner ambiguously confirms that the Commission will pay particular attention on the compliance of EU candidate countries with relevant rules. This includes EU rules with regard to taxation.

Negative impact of the US tax reform on the EU – 16 March

The European Commission has replied to a question asked by the MEP **Wolf Klinz (ALDE/GER)** with regard to the potential negative impact of the US tax reform on the EU.

In his question, Mr. Klinz asks the Commission whether EU will lose tax income as a result of the US tax reforms, and whether the US might be placed on the EU blacklist of non-cooperative jurisdictions as a result of its reforms. In his reply, **Commissioner Moscovici** confirms that the Commission is closely following the developments on the US tax reform, including its potential impact on the EU. Therefore, at this stage, the Commission is not in a position to comment on the impact of the reform, including on its potential revenue impact.

Moreover, the Commissioner reminds that the EU list can be amended by the member states at any time, taking into account new legal and regulatory developments in the screened jurisdictions, including the US tax reform. However, the US tax reforms have not been evaluated by the member states for the purpose of the list released on 5 December 2017.

Events

- 22/03/2018, ***Ninth Bruges European Business Conference***, Deloitte and College of Bruges, Bruges. Source
- 27/03/2018, ***EU Tax Reform – are Digital Companies Paying their Fair Share of Tax?***, ECIPE, Brussels. Source
- 09/04/2018, Fair and efficient corporate taxation in Europe, FEPS, Brussels. Source
- 25/04/2018, ***The future of European taxation in a global context***, Institut Friedland, Brussels. Source
- 19/06/2018, ***Digital Day – Opportunities in innovation***, Accountancy Europe, Brussels. Source