ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

19 – 30 March

HIGHLIGHTS

- European Commission: VAT Reverse Charge Mechanism to be extended – 8 March
- European Commission: two new Directives for the taxation of the digital economy proposed – 21 March
- Council: EU Heads of Government discuss digital tax – 22-23 March
- European Parliament: joint ECON and TAX3 hearing with Commissioner Moscovici – 27 March

European Commission

Commission will extend VAT Reverse Charge Mechanism – 8 March

The Commission has published a report looking into the effects of the reverse charge mechanism (Article 199 a. and b. of the VAT Directive) on combatting fraud and on the impacts of the mechanism more broadly.

The report assesses the effectiveness of the reverse charge mechanism and provides an overview of the compliance costs for businesses. It concludes that the reverse charge mechanism should be extended beyond the current deadline of 31 December 2018.

In terms of findings, the report demonstrates that member states tend to consider the reverse charge mechanism a very effective and efficient tool in fighting VAT fraud. Its application has led to a significant decrease or even disappearance of VAT fraud in the defined sectors. The Commission points out that this view is also held by consulted business stakeholders. Therefore, the Commission report concludes that the reverse charge mechanism should be extended either to another later date, or until the definitive regime is in place.

The Commission will issue an appropriate legislative proposal in the second quarter of 2018 prolonging the existing measures.

Commission puts in place first EU counter-measures on listed non-cooperative tax jurisdictions – 21 March

The European Commission has proposed guidelines for concrete countermeasures for the EU list of non-cooperative tax jurisdictions.

The guidelines aim to ensure that EU funds do not inadvertently contribute to global tax avoidance. They should guarantee that EU external development and investment funds cannot be channeled or transited through entities in countries on the EU's common list.

The new requirements address, in particular, rules governing the use of EU funds by International Financial Institutions such as the European Investment Bank (EIB), development financial institutions (DFIs) – including the European Fund for Sustainable Development (EFSD) - and other eligible counterparties. The guidance explains the procedure for implementing these requirements, and provides information on how EU partners should assess projects that involve entities in non-cooperative jurisdictions. The Commission also calls for its Implementing Partners to review their internal policies on non-cooperative jurisdictions in order to ensure that these policies reflect the latest EU and international developments on tax avoidance.

Commission proposes two new Directives for the taxation of the digital economy – 21 March

The European Commission has published its long-awaited two new Directives proposals for the taxation of the digital economy.

The Commission put forward **two new Directives**:

- Long-term proposal: establishing rules and provisions for "digital presence" (aka digital PE) – link
    - The proposal is accompanied by a helpful Annex, which includes expanded lists of services that are (Annex II) or are not (Annex III) deemed to be digital services
- Short-term proposal: interim turnover tax on the provision of certain types of digital services – link

In addition, the two proposals were accompanied by:

- A soft-law recommendation for member states to amend their double tax conventions in order to render them compatible with an eventual digital PE
- A non-binding Communication in which the Commission explains its rationale for action, objectives etc.

The Commission's ultimate aim is to introduce the concept of digital presence (on top of the already existing physical presence) into the tax system, in order to enable subjecting to corporate income tax such business activities that generate significant digital value without having lots of physical investments, plants, resources, work force etc. in a jurisdiction. Obvious examples include companies such as Google, Facebook, Amazon and the likes.

However, many individual member states are growing impatient and do not want to wait for the inevitably lengthy negotiations on a digital presence to be concluded before taxing digital businesses. Therefore, the Commission also proposes a EU-wide 3% short-term turnover tax on certain digital services, and targeting largest multinational companies with an annual turnover of EUR 750 million or above. The Commission expects the 3% tax to raise EUR 5 billion. According to circulating rumours, the estimation is that 180 or so companies would be affected, half of which American, 1/3 European and the rest neither.

The negotiations between member states on the digital tax proposals will be difficult. Most of the focus and commotion so far has been on the short-term tax, seen as more controversial of the two. Whilst the digital presence negotiations are seen as more aligned with OECD's work, the short-term measure is considered by some as a short-

termist political tool to enable France, Germany and other larger member states to tax US companies, and to capture tax income that is now "lost" to smaller member states with more generous tax systems and rates.

Main features and highlights of the proposals

Accountancy Europe already discussed and described the contents of the proposals in two earlier Tax Policy Updates (see here and here). The final provisions are largely aligned with what was reported earlier.

The main elements of the long-term measure include the following:

- **Definition of a digital service:** a service that is delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention
    - The Directive's Article 3 (5) defines in more accurate terms what is meant by digital services. Moreover, the Annex to the proposal (see link above) includes a list of specific services that also fall under the "digital" category (Annex II)
- **Digital PE definition** – a significant digital PE exists in any given member state if **one of the following** apply on a company during a tax period:
    - Turnover from the supply of digital services exceeds EUR 7 million
    - Number of users 100,000 or above
    - Number of new concluded online business contracts 3000 or above (e.g. new Facebook subscriptions, transactions on online platforms, etc.)
- **Profit attribution:** 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. It is then up to each member state to decide at what corporate tax rate it taxes the profits attributed to its territory:
    - The collection, storage, processing, analysis, deployment and sale of user-level data
    - The collection, storage, processing and display of user-generated content
    - The sale of online advertising space
    - The making available of third-party created content on a digital marketplace (e.g. online platforms for the sharing economy)
    - The supply of any digital service not listed in the points above (e.g. subscription to streaming services)

The short-term measure, in turn, contains the following elements of interest:

- Types of **revenue** subject to the tax:
    - Online placement of advertising
    - Sale of collected user data
    - Digital platforms that facilitate interactions between users
    - **NOT subject to the tax:** making digital content available to users (e.g. Netflix, Spotify)
- **Threshold:** a company is subject to the tax if it has:
    - EUR 750 million in total global annual revenue, and
    - EUR 50 million in EU revenue stemming from the above-mentioned activities (NB significantly higher than the initially predicted EUR 10-20 million)

- **Tax rate:** the rate is set at 3%, which the Commission assesses will raise EUR 5 billion in EU-wide tax yields
- **Who gets to tax** – the revenue tax income must be allocated to member states on the following basis:
    - Where an advertisement is displayed – i.e. the country where a user in whose device (phone, laptop etc.) the advertisement appears, is located
    - Where the users that generated the user data are located
    - Where the platform users are located
- **Tax allocation:** the member state of "identification" (where the digital business chooses to pay the 3% tax) collects the company's tax for the whole of EU, and then distributes the collected tax to concerned member states

- **Sunset clause:** since the short-term measure is intended to only compensate for the absence of a digital PE (i.e. until the long-term measure has been agreed on), several stakeholders – including Accountancy Europe – have called for the inclusion of a sunset clause. This clause should clearly indicate that once the long-term measure has been approved and applied, the short-term tax should cease to apply. However, neither of the two proposals includes such a clause. This is allegedly due to:

    - The Commission's legal advisors claiming that such a sunset clause is difficult to introduce in practice whilst the two proposals are on the negotiation table in parallel
    - It would send a "wrong message", since the purpose of the short-term measure is to accelerate member states' progress on agreeing on digital PE. Having a sunset clause with a pre-set date would defeat this purpose, apparently

Initial member state reactions: mixed response

Immediately after the Commission published its proposals, five member states issued a joint statement in support of the digital tax proposals. The **UK** is amongst them.

A more nuanced discussion, however, emerged at the 22-23 March European Council Summit, where EU Heads of Government exchanged views on the short-term digital tax proposal. The following positions, for example, were expressed:

- **Ireland** claims that approximately 10 member states have reservations about the tax. These countries see the proposal as flawed, and fear that the US will retaliate since mostly US large digital businesses will fall within its scope
- **Germany** was one of the early proponents of the short-term measure. However, it now fears that the US would impose a punitive tax on German cars should the EU proceed with the short-term tax. It has, therefore, expressed signs of cold feet in past days
- **Italy** emphasised that agreement at international level seems virtually impossible, given its impressions from last week's G20 meeting in Buenos Aires. This will increase political pressure for the EU to move ahead unilaterally on taxing the digital economy, rather than waiting for progress at the OECD level
- **France** flirted with the possibility of allocating income from the short-term tax directly to the EU budget. The EUR 5 billion it is expected to raise would cover approximately half of the gap in EU financing left by Brexit. Ireland, in turn, would become a net payer into the EU budget. France might propose, therefore, that Ireland could be granted some leeway on its EU payments if it supports the tax

International reactions: how will the Americans react?

Despite **Commissioner Moscovici's** insistence that the short-term tax is not directed at large US digital businesses specifically, many stakeholders and most of all the US itself remain unconvinced.

At a recent tax conference organised in Bruges, a large conference audience roared in spontaneous laughter as a Commission representative insisted that the measures are not tailored for US digital companies.

Other third countries are also issuing their reactions to the proposals. **Switzerland**, for example, recently came out against the Commission's proposed short-term measure. The Swiss government insists on the need to guarantee legal certainty, avoid over and double taxation, and not establish high administrative burdens. It calls on the EU to stick to the OECD-level.

Needless to say, the digital sector is not keen on the proposals, and in particular the short-term measure. The Global Digital Foundation, for example, argues that the short-term 3% tax is potentially disruptive, hinders digital innovation in Europe and is a politicised 'solution' to a poorly defined problem.

European Parliament

ECON hearing on VAT rates – 20 March

The ECON Committee held a first – and very brief – exchange of views on the Commission proposal to extend the 15% VAT minimum rate to also apply under a future definitive regime. The leading MEP on the file, **Roberto Gualtieri (S&D/ITA)** published earlier his draft report welcoming the Commission's proposal and urging member states to swiftly agree on it.

During the ECON exchange of views, no objections were raised to Mr. Gualtieri's report or the Commission proposal:

- **Roberto Gualtieri (S&D/ITA):** the report concerns a small but important component of the Commission VAT package that makes permanent the minimum rate of 15%. This was agreed in 1992 and the Commission is now making it permanent. He welcomed this move
- **Roberts Zile (ECR/LAT):** the ECR Group can support this
- **Pervenche Beres (S&D/FRA):** also welcomed the proposal and called for a solid system for minimum rates

As always on tax matters, the European Parliament only submits its non-binding opinion. Member states will have to agree by unanimity.

For further details on the Commission proposal, please see Accountancy Europe's Tax Policy Update from 19 December 2017.

Joint ECON and TAX3 hearing with Commissioner Moscovici – 27 March

The ECON and TAX3 Committees have held a joint hearing with **Commissioner Moscovici** on the EU's tax work and priorities.

The debate focused, mainly, on the digital tax proposals, the lack of progress on C(C)CTB, as well as the Commission's decision to name seven EU member states for enabling "aggressive tax planning" (ATP) as part of its latest European Semester. On the last point, please see Accountancy Europe's Tax Policy Update from 16 March.

Full highlights

The full highlights of the hearing include the following:

- **Commissioner Moscovici** defended the Commission's proposals for the taxation of digital economy. He also stated the following:
  - **TAX3:** is delighted that TAX3 will also look into VAT fraud
  - **'Tax havens':** the EU does not have tax havens by international standards, but it does have countries prone to "aggressive tax planning" (ATP). This is what the Commission pointed out to in the last European Semester. The only way for European countries to retain fiscal sovereignty is to act collectively
  - **VAT definitive regime:** the Commissioner confirmed that the Commission will publish in May further proposals on definitive regime.
- **Alain Lamassoure (EPP/FRA):** we have heard that Council is not working a lot on CCCTB, and they are focusing on CCTB only. This is concerning. How can we ensure that member states advance swiftly on digital taxation?
- **Jeppe Kofod (S&D/DEN):** asked what is the state of play with public CBCR. He also asked whether the Commission will legislate to eradicate ATP systems in member states singled out in the European Semester
  - **Commissioner Moscovici:** on public CBCR, the same old uncertainty on securing a sufficient qualified majority remains. There are still different opinions on legal basis on public CBCR – most countries agreeing that it is a corporate reporting matter, whilst a minority led by Germany insisting that it is a tax file and should be subject to unanimity. The Commission and the Parliament together should put pressure on member states
- **Pirkko Ruohonen-Lerner (ECR/FIN):** how will the Commissioner address concerns raised by businesses on the digital tax proposals? Finnish companies will never accept the proposals
- **Lieve Wierinck (ALDE/BEL):** what are the costs of US tax reforms to the EU, and how do we address this without CCCTB? Is the digital tax proposal discriminatory, and how do you avoid that taxes are not passed to consumers? How do you force companies to pay the digital taxes, and how do you avoid double taxation? How will you get information on the number of users? On scope/thresholds, how were these determined? Why did you choose an absolute number for business contracts, and not a percentage?
  - **Commissioner Moscovici:** US tax reform – BEPS decisions and conformity with WTO rules are the key issues for the EU. It is too early yet to assess the potential costs and impact on the EU. On the digital tax proposals, digital companies must declare all the information that they have and make sure that they provide it. Self-declaration is already the norm in tax systems, and member states are free to investigate and conduct tax audits if they suspect wrongdoings. On digital presence thresholds – the EUR 750 million is aligned with OECD, and for EU threshold of EUR 50 million a political decision had to be made
- **Sven Giegold (Greens-EFA/GER):** will we see in May country-specific recommendations to the seven member states to change their tax systems? Moreover, we see a worrying trend of member states competing for rich individuals. This leads to unhealthy tax competition. Will the Commission commit to

tackling this, and can we get an overview of the special advantages granted by member states to rich individuals?

  - **Commissioner Moscovici:** some of the seven member states' ministers were unhappy about being named. However, they cannot deny that there is a problem. I cannot confirm whether reform requests will be included in country specific recommendations in spring. Finally, golden visas etc. are not within my portfolio, this would be **Commissioner Jourova's** (justice) remit

- **Marie-Pierre Vieu (GUE-NGL/FRA):** how would the Commission prevent digital companies from transferring the tax to consumers. Finally, Ireland, Italy, Malta, Cyprus and the Netherlands have come forward with responses to the Commission's proposals and asked how was the Commission intending to deal with their expected resistance
  - **Commissioner Moscovici:** stated that with the short-term measure, approximately 180 companies will be affected, 50% of which are from the US, about one-third European, and the rest are from elsewhere. He also reminded that despite opposition from certain member states, there is overall significant support for the proposals in the Council
  - The Commissioner also observed that the sum of EUR 5 billion and that the short-term measure is expected to raise is equal to half of what Brexit would cost the EU. However, he said, they must assess how member states would respond to the prospect of the tax yield going to the EU budget. Some member states are hesitant, but hopefully they can be convinced with sensible arguments
- **Ludek Niedermayer (EPP/CZE):** the short-term measure would require companies to cooperate and disclose relevant data. How can we trust this? On C(C)CTB, should we not go for enhanced cooperation?
  - **Commissioner Moscovici:** I prefer taxing profits rather than turnover, so the Commission will prioritise the long-term solution
  - However, on the data stemming from companies, the Commissioner reminded that this is not unlike almost all corporate taxes. Corporate taxes are based on self-declarations. All the digital companies I have met confirmed that they will comply. On C(C)CTB, the Commissioner urged member states to adopt the proposals by the end of this year. The Financial Transactions Tax (FTT) demonstrates that enhanced cooperation is not always the best way forward

Council

EU list of non-cooperative jurisdictions: letters of commitment from Andorra published – 19 March

The Council of the EU has continued its disclosure of the commitment letters received form potentially non-cooperative third countries. Indeed, they recently published the commitment letters received from Andorra.

Many other third countries' commitments were already published a few weeks ago. See for example Accountancy Europe's Tax Policy Update from 16 March. The publication of the letters follows criticism from civil society and the European Parliament that the listing and delisting process is politicised and non-transparent.

As part of the EU 'tax haven' listing process, third countries have to make political commitments to reforming their tax systems. Their delivery on these commitments will then be monitored by the Council's Code of Conduct Group. Should they fail to deliver, the jurisdictions will be added on the blacklist.

EU Heads of Government discussed digital tax – 22-23 March

EU Heads of Government have discussed the Commission's proposals for taxation of the digital economy at the latest EU Summit. The debate took place over a dinner, and no written conclusions came out of it.

The battle lines are the usual ones: France is at the head of a majority of enthusiastic countries, whilst a number of smaller member states such as Malta, Ireland and Cyprus resist. The feeling in the room is, however, that despite its consistent support for digital taxes, Germany will not die on the barricades for it. This means that France may be left alone in driving the momentum, supported by Spain and Italy in particular.

Court of Justice of the EU – Rulings

Case C-533/16: right to claim a refund of VAT – 21 March

The Second Chamber of the CJEU has ruled against member state legislation under which, in circumstances in which VAT was charged to the taxable person and paid by it several years after delivery of the goods in question, the benefit of the right to claim a VAT refund is denied on the grounds that the limitation period provided for by that legislation for the exercise of that right began to run from the date of supply and expired before the application for a refund was submitted.

Cases C-327/16 and C-421/16: Tax competence of the State of residence – 22 March

The First Chamber of the CJEU has ruled that:

- Article 8 of Council Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states, as amended by the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, as adjusted by Decision 95/1/EC, Euratom, ECSC of the Council of the European Union of 1 January 1995, must be interpreted as meaning that it does not preclude legislation of a member state pursuant to which the capital gain resulting from an exchange of securities falling within the scope of that directive is established when the transaction occurs, but is taxed in the year in which the event putting an end to the deferred taxation occurs: in this case, the transfer of the securities received in exchange

- Article 8 of the Directive 90/434, as amended by the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, as adjusted by Decision 95/1, must be interpreted as meaning that it does not preclude legislation of a member state that provides for the taxation of the capital gain relating to an exchange of securities, in a case where taxation of the gain has been deferred, upon a subsequent transfer of the securities received in exchange, even though that transfer does not fall within the fiscal competence of that member state
- Article 49 TFEU must be interpreted as meaning that it precludes legislation of a member state which, in a situation where the subsequent transfer of securities received in exchange does not fall within the fiscal competence of that member state, provides for taxation of the capital gain that is subject to tax deferral upon that transfer without taking into account any capital loss occurring at that time, whereas account is taken of such a capital loss when the taxpayer holding the securities is resident for tax purposes in that member state on the date of the transfer. It is for the member states, in compliance with EU law and, in the present case, the freedom of establishment in particular, to provide detailed rules for offsetting and calculating that capital loss

International

Switzerland Taking Second Shot At Corporate Tax Reform – 22 March

The Swiss Federal Council has approved a package of tax reforms designed to better align the country's tax rules with international standards.

According to the Council, the package will make a decisive contribution to Switzerland's competitiveness, and it therefore wishes to quickly improve matters for domestic and foreign companies. The package includes, for example, the following reform measures:

- The abolition of the special arrangements for cantonal status companies, with the aim of ensuring that status companies will pay more tax and local small businesses less tax
- A mandatory patent box regime for all cantons, accompanied by additional deductions for R&D expenditure to be implemented on an optional basis
- A relief restriction, which includes a binding provision for the cantons that at least 30% of companies' profits must always be taxed before the above measures are applied

The Council hopes that the parliament could adopt the measures during the autumn session. If a referendum is not called, the first measures could come into force in early-2019, with the majority entering into force in 2020.

TAX AVOIDERS' ACCOUNTANTS MAY HAVE TO GIVE EVIDENCE TO MPS – 27 March

A sub-Committee of the UK parliament plans to invite accountants of tax avoiding businesses to publicly testify before it.

The Committee's Vice-Chair is particularly interested to hear from accountancy firms how their schemes function and how they defend them. Overall, in the next six months, the Committee will organise several hearings focusing on tax abuse, examining the practices of largest accountancy firms, individual tax avoiders and evaders and the use of the UK's crown dependencies and overseas territories.

Wealthy Belgian taxpayers hiding EUR 48 billion in Luxembourg – 27 March

Reportedly, hundred wealthiest families and several businesses from Belgium are hiding up to EUR 48 billion in Luxembourg.

The investigation was conducted by the Belgian daily newspaper, Le Soir, based on extensive investigations of files from the Luxembourgish business register. The findings and subsequent articles are likely to further liven and spark the anti-tax avoidance debate in Belgium.

OECD

Platform for Collaboration on Tax submits tax report to G20 – 20 March

The Platform for Collaboration on Tax (PCT) has published its latest report to G20 leaders on most recent tax developments. PCT is a joint initiative of the OECD, UN, the IMF and the World Bank aiming to improve tax cooperation and coordination between these organisations.

The PCT report provides an overview of latest and most relevant international tax developments. It also indicated the PCT's next tax priorities, which include:

- Complete the Platform Toolkits to help countries address challenges in international taxation, and launch an expanded outreach program to support the development and use of the Toolkits
- Provide, in mid-2018, an update to the G20 on tax certainty and developing countries
- Help developing countries access the knowledge, experience and good practices in tax administration, starting with the use of technology, working with the Forum on Tax Administration, regional tax organizations and other partners
- Launch a multi-year Tax and SDGs Program, that will include components on taxation and health, education, gender, inequality, environment, and infrastructure

OECD releases additional guidance on the attribution of profits to a permanent establishment under BEPS Action 7 – 22 March

The OECD has published additional guidance on the attribution of profits to permanent establishments, under BEPS Action 7.

The report responds to the mandate in the 2015 BEPS Action 7 report to develop additional guidance on how the existing rules of Article 7 of the OECD Model Tax Convention would apply to permanent establishments resulting from the changes to the definition of permanent establishment in Article 5 of the OECD Model Tax Convention (in particular for PEs outside the financial sector). The guidance focuses, in particular, on high-level general principles which countries find to be relevant and applicable in attributing profits to permanent establishments in accordance with applicable treaty provisions.

State Aid

Commission publishes non-confidential version on investigation into Dutch tax treatment of IKEA – 27 March

The Commission has published the non-confidential version of its decision to open an in-depth investigation into Dutch tax treatment of Inter IKEA, one of the two groups operating the IKEA business.

The decision was adopted on 18 December 2017, and was also reported in Accountancy Europe's Tax Policy Update from 20 December 2017. The Commission is concerned that two Dutch tax rulings may have allowed Inter IKEA to pay less tax and given it an unfair advantage over other companies. The opening of an in-depth investigation gives the Netherlands and interested third parties an opportunity to submit comments.

Likewise, business representatives from Finland, Sweden and Denmark published a joint letter criticising the Commission's digital tax proposals. This reflects the concerns from small exporting economies.

European Commission reportedly looking at VW's tax scheme – 28 March

The European Commission is reportedly looking into VW's tax deals with Luxembourg, suspecting that it was granted unfair tax advantages. In 2014, the VW transferred almost two dozen subsidiaries from a Netherlands-based holding company to a structure in Luxembourg, where it could have benefited from favorable tax rulings.

Other News

Eurodad: tax rulings in Europe on the increase – 14 March

The civil society organisation Eurodad has reported on latest figures from the European Commission, which appear to show an increase in the number of tax rulings in Europe in past years. In particular, the number of unilateral agreements – which Eurodad maintains are the most problematic ones – increased dramatically, from 1252 at the end of 2015 to 2053 at the end of 2016. This corresponds to an increase of 64%.

EESC publishes opinion on latest VAT reform package – 14 March

The European Economic and Social Committee (EESC) has published its opinion on the Commission's latest VAT reform package. The opinion includes the following:

- Welcomes the Commission's determination to close the VAT gap and the involvement of the European Public Prosecutor's Office in cases of VAT fraud above EUR 10 million
- Recommends that tax authorities investigate how upcoming technologies can contribute to the fight against VAT fraud and be used as a helpful tool for simplifying the administrative burden on both businesses and tax administrations. In particular, member states should create appropriate fora for the exchange of best practices in revenue collection and on how to develop technologies to facilitate proper tax collection in cross-border trade situations
- Underlines the importance of tax neutrality between different companies, pointing out that VAT payments should not be allowed to adversely affect the liquidity of some businesses
- Notes that with regard to the certified taxable person (CTP) the Commission deems this concept to be important for the transition towards a VAT system based on the destination principle and agrees that businesses whose tax reliability is proven should be able to benefit from appropriate simplification measures

EESC's opinions are legally non-binding, but do enjoy legitimacy given that it brings together Europe's industry and labour associations.

MEP Questions & Answers

Negative impact of the US tax reform on the EU – 22 March

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

In his question, Mr. Klinz refers to assessments according to which the minimum tax on intra-group interest and service charges in the case of foreign undertakings, as adopted by the US, contravenes bilateral tax treaties. He asks the Commission whether it shares this view, whether it considers that the American tax reform contravenes WTO agreements with regard to unlawful export subsidies or to the tax rate for patent applications, and whether it considers that the tax reform may contravene other international, G20 or OECD agreements.

In his reply, **Commissioner Moscovici** points out that it is up to the EU member states themselves to assess whether the international tax provisions of national laws is in violation with their double taxation treaties. Moreover, he re-iterates that the US tax reform entails two provisions that are of concern from the perspective of WTO compatibility:

- The Base Erosion and Anti-abuse Tax (BEAT), which could give rise to discrimination and incompatibility with WTO rules because it would in certain cases be imposed on purchases from abroad while not imposed on purchases made domestically
- The tax deduction for Foreign Derived Intangible Income (FDII), equal to 37.5% of US corporation's intangible income multiplied by the ratio of the US corporation's exports of goods and services divided by its gross income, which seems to result in an export subsidy

Moreover, the Commission is concerned that the FDII may be contrary to the OECD BEPS action 5 modified nexus approach for intellectual property regimes. However, the Commissioner does not elaborate in his reply what measures or follow-up action the Commission would take.

Events

- 09/04/2018, ***Fair and efficient corporate taxation in Europe***, FEPS, Brussels. Source
- 17/04/2018, ***Fixing VAT for E-Commerce***, CEPS, Brussels. Source
- 25/04/2018, ***The future of European taxation in a global context***, Institut Friedland, Brussels. Source
- 26/04/2018, ***Improving the Single Market through VAT action: assessing the EU proposals and the way forward***, EPC, Brussels. Source
- 19/06/2018, ***Digital Day – Opportunities in innovation***, Accountancy Europe, Brussels. Source