Tax Policy Update

16 – 27 April

HIGHLIGHTS

- European Parliament: Plenary discusses state of public CBCR negotiations – 18 April
- Council: member states freeze CCTB negotiations in order to assess its impact on tax bases – 20 April
- European Commission: new rules for whistleblower protection proposed, covers tax avoidance too – 23 April
- European Parliament: ECON Committee holds public hearing on definitive VAT system – 24 April
- European Commission: new Company Law Package with tax dimension published – 25 April

European Commission

Commission kicks off Fair Taxation Roadshow – 19 April

The European Commission has launched a series of seminars on fair taxation, with a first event held in Riga on 19 April.

These seminars bring together civil society, business representatives, policy makers, academics and interested citizens to discuss and exchange views on tax avoidance and tax evasion. Further events are planned throughout 2018 in Austria (17 May), France (8 June), Italy (19 September) and Ireland (9 October). The Commission hopes that the roadshow seminars will further encourage active engagement on tax fairness principles at EU, national and local levels. In particular, a main aim seems to be to spread the tax debate currently ongoing at the EU-level into member states as well.

Commission launches VAT MOSS portal – 19 April

The European Commission has launched a Mini-One Stop Shop (MOSS) portal for VAT purposes. The new MOSS portal provides comprehensive and easily accessible information on VAT rates for telecom, broadcasting and e-services, and explains how the MOSS can be used to declare and pay VAT on such services.

Commission proposes EU rules for whistleblower protection, covers tax avoidance as well – 23 April

The European Commission has published a new Directive for the protection of whistleblowers. The Directive is accompanied by a Communication explaining the rationale for the Commission proposal, as well as an Annex.

The Directive's scope covers whistleblowing on breaches of EU legislation. The proposal seeks to introduce minimum standards for protection in a wide range of areas. However, the it fails to be truly horizontal, which could lead to confusion about its scope.

Of interest from a tax perspective, whistleblowers will also be protected when reporting on breaches of corporate tax rules or "arrangements whose purpose is to obtain a tax advantage that defeats the object or purpose of the applicable corporate tax law". This means that tax avoidance also falls under the Directive's scope. This is hardly surprising, however, given that the Luxleaks scandal which triggered the still ongoing tax reform revolution in the EU also raised questions about (the lack of) whistleblower protection in Europe.

In terms of next steps, the European Parliament and the Council will both formulate their respective opinions on the Commission proposal, and will have to agree before it can become EU law. The transposition deadline, as set in the Directive, is 15 May 2021.

Commission launches Company Law Package with tax dimension – 25 April

The European Commission has proposed new company law rules to make it easier for companies to merge, divide or move within the Single Market. This Company Law Package consists of two new Directives, which are available here and here.

Of particular interest from a tax perspective, the Directives include provisions to enable member states to prevent re-localisation by companies for the purpose of "obtaining undue tax advantages". This addition has been called for by France and segments of the civil society, and continues the trend of tackling 'aggressive tax planning' within the Single Market itself.

European Parliament

European Parliament Plenary discusses state of public CBCR negotiations – 18 April

The European Parliament Plenary has held an exchange of views on the status of public CBCR negotiations in the Council.

All MEPs expressed their discontent with the situation in the Council, arguing that some member states such as Germany are using the legal basis as an excuse to delay discussions. The Political Groups reiterated that in their view, this is a fictitious justification, since both the legal services of the Parliament and the European Commission agreed that there should be no conflict on the legal basis. The MEPs maintain that the Directive is a transparency tool, and not tax question.

Full highlights

The following elements provide an overview of some of the main positions expressed:

- **Evelyn Regner (S&D/AUT):** public CBCR is about transparency, accounting, financial reporting and not a new tax initiative. The proposal is neither harmonising taxes nor improving cooperation between tax authorities or creating new tax obligations. Instead, public CBCR is about good corporate governance, and accountability of multinationals to all taxpayers. Control by the public is necessary because so far, the citizens in Europe trust neither the large corporations nor all governments

  - She called on the Council to justify the block in negotiations. In her view, the Council is merely waiting for the grass to grow and for people to stop talking about public CBCR. She also recalled that the EU is a pioneer in reporting, referring for example to NFI disclosures

- **Monika Panayotova**, **Bulgarian Presidency:** the Council will probably need more time to clarify its position and she will keep MEPs informed of any further developments
- **Jiří Pospíšil (EPP/CZE):** the Council's reply is 'totally inadequate'. The issue of the legal base is just an excuse which the Council uses to block discussions. It would be more honourable for those member states that do not want public CBCR to clearly say that they disagree, so that EU voters and citizens know what is going on. Mr Pospíšil underlined that he cannot tell his voters what the dispute is about and why such important information for the fight against tax avoidance is rejected by some member states in the Council
- **Pascal Durand (Greens-EFA/FRA):** the European Parliament has asked the Commission, with the support of two legal services, to go towards the transparency of this information. Mr Durand underlined that this is about balance sheets, and not a tax issue, and as such, there is no argument, even fictitious, for not acting.
- **Kostas Chrysogonos (GUE-NGL/GRE):** the obligation to publish CBC information can promote corporate responsibility and reduce aggressive tax planning. It is neither fair nor viable to impose small and medium-sized businesses and workers on increasingly unbearable taxes, while large multinationals are essentially exempt. Any further delay in this issue is unjustified, he concluded
- **Elly Schlein (S&D/ITA):** the doubts raised on the legal basis are only excuses to decide unanimously and hear Parliament only in consultation

European Parliament Plenary endorses minimum EU VAT rate – 19 April

The European Parliament Plenary has voted in favour of the Commission's proposal to maintain the obligation to respect a 15% minimum standard VAT rate. The report was adopted in a single vote with 562 votes in favour, 58 votes against and 22 abstentions. The dossier was led by the MEP **Roberto Gualtieri (S&D/ITA)**. Either way, the European Parliament has no say on the matter and may only submit its non-binding opinion.

European Parliament draft report on CTP published – 23 April

The MEP **Roberts Zile (ECR/LAT)** has published his draft report on the Certified Taxable Person (CTP). His report will form the European Parliament's non-binding opinion on the Commission proposal. For further information on the proposal, please see Accountancy Europe's Tax Policy Update from 13 October 2017.

In his report, Mr. Zile welcomes the Commission's proposal to strengthen cooperation between member states in the fight against VAT fraud. However, he also believes that the Commission proposal needs to strike a better balance between requests for and analysing of information on the one hand, and data protection and privacy on the other.

He has, therefore, proposed several amendments that seek to define more clearly the operating boundaries of Eurofisc as well as the processing and use of information by the authorities. References to relevant data protection legislation have been inserted.

Similarly, Mr. Zile aims to strike a better balance between the interests and responsibilities of the requesting and the requested tax authorities. He believes that with his amendments, the rights of the requested authorities are now better served. Furthermore, he proposes a more simplified mechanism on how the member states deal with outstanding VAT liabilities. In the same breath, he has also deleted provisions relating to certified taxable person.

In terms of next steps, the ECON Committee is currently scheduled to vote on the draft report on 19 June. A Plenary vote, in turn, is anticipated for 2 July.

ECON Committee holds public hearing on definitive VAT system – 24 April

The ECON Committee of the European Parliament has held a public hearing with stakeholders on the definitive VAT system, and the Commission's VAT reform agenda more broadly.

The stakeholder speakers at the event were:

- **Maria Elena Scoppio**, Head of Unit, Indirect Taxation and Tax Administration, European Commission
- **Professor Rita de la Feria**, Professor of Tax Law, School of Law, University of Leeds
- **Ine Lejeune**, Partner, Tax Policy, Law Square
- **Kristian Koktvedgaard**, Chair of BusinessEurope's VAT Policy Group, Business Europe
- **Gerhard Huemer**, Director for Economic and Fiscal Policy, UEAPME

At the hearing, the speakers strongly criticised the Commission's proposed de-harmonisation of VAT rates as well as the concept of the certified taxable person (CTP).

Rita de la Feria fears that liberalising VAT rates would lead to VAT competition between member states. **Ine Lejeune**, for her part, doubted to what degree the CTP concept would deter and prevent VAT fraud. Instead, it might even incite more fraud, she fears. **Kristian Koktvedgaard**, for his part, maintains that the lack of trust between member states is the key obstacle in the fight against VAT fraud.

Council

EU LIST OF 'TAX HAVENS': ADDITIONAL COMMITMENT LETTERS PUBLISHED – 20 April

The Council has published additional letters of commitment received from third jurisdictions. These letters are from Marshall Islands, Maldives and Jordan. The jurisdictions will need to concretely follow up on the commitments made, or face the risk of being added on the EU list of 'tax havens'.

Member states freeze CCTB negotiations in order to assess its impact on tax bases – 20 April

EU member states will put a halt on some aspects of the technical discussions on CCTB for the time being, in order for each member state to evaluate the proposal's potential impact on their national tax bases.

The Bulgarian Presidency has published a document providing guidance for these national impact assessments. The guidance establishes the subject matters, scope and definitions for the national impact assessment procedures.

Court of Justice of the EU – Rulings

C-580/16: VAT identification across borders – 19 April

The Fourth Chamber of CJEU has ruled that:

- Article 141(c) of the VAT Directive must be interpreted as meaning that the requirement laid down in that provision is met where the taxable person is resident and identified for VAT purposes in the member state from which goods are dispatched or transported, but that that taxable person uses the VAT identification number of another member state for that specific intra-Community acquisition
- Articles 42 and 265 of the VAT Directive, read in conjunction with Article 263, must be interpreted as precluding the tax authorities of a member state from applying the first paragraph of Article 41 of the VAT Directive solely on the ground that, in the context of an intra-Community acquisition, made for the purposes of a subsequent supply in the territory of a member state, the recapitulative statement, referred to in Article 265 of the VAT Directive was not submitted in good time by the taxable person identified for VAT purposes in that member state.

C-233 to C-237/16: Regional taxes in Spain on large retail establishments – 26 April

The First Chamber of the CJEU has provided a ruling for five cases concerning the legality of regional taxes in Spain (see here, here and here). In the cases, a national association of large distribution companies challenged the lawfulness of the regional taxes in Spain. CJEU has now decided that neither freedom of establishment nor the law on State aid preclude taxes on large retail establishments, such as the ones in the case raised. See here for a helpful explanation of what the ruling entails and what the Court's decision and reasoning were.

C-81/17: Deduction of input tax – 26 April

The Ninth Chamber of CJEU has ruled that Articles 167, 168, 179, 180 and 182 of the VAT Directive and the principles of effectiveness, fiscal neutrality and proportionality preclude national legislation which, by way of derogation from the five-year limitation period imposed by national law for the correction of VAT returns, prevents a taxable person from making a correction in order to claim his right of deduction on the sole ground that that correction relates to a period that has already been the subject of a tax inspection.

OECD

Workers in OECD countries pay one quarter of wages in taxes – 26 April

Workers in OECD countries paid just over a quarter of their gross wages in tax on average in 2017, with just over half of countries seeing small increases in the personal average tax rate. These are the findings stemming from a new OECD report titled *Taxing Wages 2018*.

The report shows that the "net personal average tax rate" – income tax and social security contributions paid by employees, minus any family benefits received, as a share of gross wages – was 25.5% across the OECD. This OECD-wide average rate, calculated for a single person with no children earning an average wage, has remained stable in recent years, but it covers country averages that range from below 15% in Chile, Korea and Mexico to over 35% in Belgium, Denmark and Germany.

State Aid

Commission clears Ireland's sugar sweetened drinks tax – 24 April

The European Commission has concluded that Ireland's sugar sweetened drinks tax does not involve state aid. In particular, the Commission found that the measure's scope and design are consistent with the health objectives pursued by Ireland, namely tackling obesity and other sugar related diseases.

Ireland signs landmark agreement to recover Apple taxes – 24 April

Ireland has signed an agreement with Apple to enable the company to pay EUR 13 billion into an escrow account. Ireland is thus unlikely to face fines for failing to collect the required amount.

This is the latest development in the famous tax state aid case from October 2016, whereby the Commission ordered Ireland to recover EUR 13 billion from Apple. The Commission argues that Ireland granted Apple unlawful state aid in the form of beneficial tax arrangements not available to other companies. For further information on the Commission ruling, please see Accountancy Europe's Tax Policy Update from 2 September 2016.

Both Ireland and Apple have appealed the Commission's ruling. The sum of EUR 13 billion is to be paid into an escrow account, until the Court of Justice of the EU delivers its final ruling on the matter.

Other News

European banks call for amendments to VAT Directive – 18 April

The European Banking Federation (EBF) has called on the European Commission to amend the EU VAT Directive on services supplied by independent groups of persons (IGP). EBF maintains that such amendments are relevant following a number of Court of Justice of the EU's (CJEU) rulings on the matter.

EBF argues that the scope of application of the VAT exemption related to the services supplied to their members by IGPs has been strictly limited by recent decisions of the CJEU, seriously affecting European banks. This case law, EBF argues, will lead to a significant increase of the cost of supplies of services between companies active in the financial and insurance sector, since VAT will be applicable on such services and the above mentioned taxable persons usually only benefit from limited input VAT deduction rights.

It is essential to secure the continued applicability of the IGP regime on the financial and insurance sectors. EBF therefore calls on the Commission to urge it to submit draft legislation to amend the VAT Directive to that effect.

MEP Questions & Answers

The consequences of the US tax reform – 17 April

The European Commission has replied to a question asked by the MEP **Jérôme Lavrilleux (EPP/FRA)** with regard to the consequences of the US tax reform.

In his question, Mr. Lavrilleux refers to a number of specific provisions of the US tax reform package that the Commission has identified as particularly harmful. These include deductions for 'foreign-derived' profits and a provision to prevent the 'erosion' of the US corporate 'tax base'. He asks the Commission what it intends to do in order to safeguard Europe's interests.

In her reply, **Commissioner Malmström** (trade) states that the Commission is currently assessing the impacts of the above-mentioned measures, and has sent out questionnaires to member states and companies in order to obtain further information.

However, the Commissioner already confirms that based on an initial analysis, the Commission believes that these two aspects could create potential inconsistencies with the US' WTO obligations. Some EU member states have also expressed concerns over the compatibility of the Base Erosion and Anti-Abuse Tax (BEAT) provision with their double tax conventions with the US.

The Commission has relayed these concerns to the US. It seeks to discover whether there may be some scope to address these concerns during the implementation process.

Impact study of the channelling of funds through tax havens – 17 April

The European Commission has replied to a question asked by the MEP **Dimitrios Papadimoulis (GUE-NGL/GRE)** with regard to the channeling of funds through tax havens.

In his question, Mr. Papadimoulis asks the Commission whether it will assess the losses for member states stemming from funds channeled through jurisdictions on the EU blacklist. He also asks whether EU member states will be included on the list as well, and how to ensure that jurisdictions that have made commitments to reform will follow up on these commitments.

In his reply, **Commissioner Moscovici** maintains that due to the nature of tax avoidance and evasion, their exact impact is difficult to assess. EU member states will not be listed, since the blacklist only deals with third countries. However, the Commission argues that member states are already reviewed by the Commission and they comply with the listing criteria. As for monitoring the delivery on the commitments made by third countries, the Commissioner states that the Council has tasked the Commission to be in a "technical dialogue" with relevant jurisdictions.

Compatibility of US tax reform package with WTO rules – 18 April

The European Commission has replied to a question asked by the MEP **Sophia in 't Veld (ALDE/NLD)** with regard to the compatibility of the US tax reform with WTO rules.

In her question, Ms. in 't Veld asks the Commission whether the US reforms will lead to the relocation of companies to the US. She also asks whether the Commission is aware of the administrative and financial burden of the Global Intangible Low-Tax Income (GILTI) for SMEs with at least 10% ownership by US citizens, including EU citizens with dual nationality, and whether the Commission believes that some of the provisions are in breach of WTO rules.

In her reply, **Commissioner Malmström** (trade) re-iterates that the Commission is currently assessing the potential impact of the reform, and has sent a questionnaire to member states and businesses to gather more facts. The Commission also believes that some of the provisions may be in breach with WTO rules. The Commission is liaising with its US counterparts to find out whether some of the concerns could be addressed at implementation stage.

VAT on provision of yachts – 23 April

The European Commission has provided a collective reply to a number of MEP questions asking about the Maltese VAT provisions for yachts, as revealed by the Paradise Papers leaks.

For example, the MEP **David Casa (EPP/MAL)** asks the Commission why Malta's VAT system for yachts is under critical scrutiny, when for example France also has a total VAT exemption on works and services on the basis of a yacht undertaking a commercial activity. He also points out that this French system was introduced when Commissioner Moscovici was still the finance minister.

In his reply, **Commissioner Moscovici** expresses concerns that yacht VAT systems such as in Malta may distort competition in the Single Market. The Commission therefore sent letters of formal notice to Cyprus, Malta and Greece. However, the Commission is currently also investigating the situation in all other EU member states.

Impact of the reduction of Dutch dividend tax on aggressive tax planning/indicators for it – 24 April

The European Commission has replied to a question asked by the MEP **Paul Tang (S&D/NLD)** with regard to the Dutch dividend tax on aggressive tax planning.

In his question, Mr. Tang expresses concerns over Dutch plans to get rid of its current 15% dividend tax altogether in 2019. He asks the Commission whether it believes the Dutch government to be facilitating aggressive tax planning.

In his reply, **Commissioner Moscovici** states that the Dutch plans are likely to facilitate aggressive tax planning unless effective countermeasures are put into place at the same time. However, he points out that the Dutch government also intends to introduce new withholding taxes on intra-group dividend, interest and royalty payments to entities that are resident either in a low-tax jurisdiction or in a jurisdiction that appears on the EU list of non-cooperative jurisdictions. These new provisions should also include an anti-abuse element. However, the Commission insists that these new provisions should be applied from 2020, in order to minimize tax loopholes.

Removal of obstacles to tax harmonisation in the single market – 25 April

The European Commission has replied to a question asked by the MEPs **Javier Nart (ALDE/SPA)**, **María Teresa Giménez Barbat (ALDE/SPA)** and **Carolina Punset (ALDE/SPA)** with regard to obstacles to tax harmonisation in the Single Market.

In their question, the MEPs ask the Commission whether it believes that different corporate tax rates hinder free competition in the Single Market, whether it will propose to further harmonise corporate tax rates in the EU, and whether it would in such a case introduce a compensation system for member states who will lose out from the harmonisation of rates.

In his reply, **Commissioner Moscovici** applauds the Commission's work in past years to promote a harmonised approach to the fight against tax avoidance. He does not address the question on harmonising corporate tax rates, but refers to the CCCTB as a positive step forward. The Commissioner also comments that the current CCCTB proposal does not entail any compensation mechanism.

Tax evasion and avoidance in the technology sector – 25 April

The European Commission has replied to a question asked by the MEP **Dimitrios Papadimoulis (GUE-NGL/GRE)** with regard to tax evasion and avoidance in the technology sector.

In his question, Mr. Papadimoulis asks the Commission whether it has data for each member state as to how much they are losing due to the activities of digitalised companies, and whether it will propose a comprehensive strategy to address the taxation of the digital sector.

In his reply, **Commissioner Moscovici** refers to the recent digital tax proposals which includes an impact assessment and all relevant data. He also refers to the comprehensive solution proposal. As an interesting addition, the Commissioner emphasises that another important element of the comprehensive strategy is to integrate the provisions laid down in the new long-term solution Directive into the CCCTB proposals, as part of the ongoing discussions in the Council. He finally highlights that the amendments proposed by the European Parliament in its opinions to the two C(C)CTB proposals are a good basis for further work.

Manipulations in the drawing up of the list of tax havens – 25 April

The European Commission has replied to a question asked by the MEP **Maite Pagazaurtundúa Ruiz (ALDE/SPA)** with regard to the EU list of "tax havens".

In her question, Ms. Pagazaurtundúa Ruiz laments the recent removal of several jurisdictions from the list recently. She therefore asks the Commission to elaborate on the deadlines for these jurisdictions to deliver on their commitments. She also asks what will happen to eight jurisdictions which had until February before being included in the blacklist, and whether Brexit will "facilitate more stringent commitments".

In his reply, **Commissioner Moscovici** states that the deadline for complying with the EU standards depends on the status of each jurisdiction. Jurisdictions have to be in conformity by the end of 2018, but developing countries have been given until the end of 2019 to become compliant.

As for the eight jurisdictions affected by natural disasters, the Council decided on 13 March 2018 to place three jurisdictions on the EU list while four others were recorded as committed jurisdictions. The technical assessment is still ongoing for the last jurisdiction.

Finally, the Commissioner simply points out that the Commission is not in a position to comment on Brexit.

Events

- 16/05/2018, ***Germany's global role in the financial transparency field***, Transparency International, Berlin. Source
- 17/05/2018, ***Fair Taxation Seminar in Vienna***, European Commission, Vienna. Source
- 23/05/2018, ***How to ensure fair taxation in a digitalized world***, ETAF, Brussels. Source
- 08/06/2018, ***Fair Taxation Seminar in Paris***, European Commission, Paris. Source
- 19/06/2018, ***Digital Day – Opportunities in innovation***, Accountancy Europe, Brussels. Source
- 19/09/2018, ***Fair Taxation Seminar in Rome***, European Commission, Rome. Source
- 09/10/2018, ***Fair Taxation Seminar in Dublin***, European Commission, Dublin. Source