ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

30 April – 11 May

HIGHLIGHTS

- Council: EU finance ministers hold informal discussion on digital tax – 27/28 April
- European Parliament: ECON Committee publishes three draft reports on VAT reform – 2 May
- Council: member states reluctant to cooperate with TAX3 Committee of the European Parliament – 8 May

European Commission

Commission publishes vision on own resources for 2021-2027 – 2 May

The European Commission has published its vision for a EU budget of the future. The Commission's aim is that in 2021-2027, EUR 22 billion of the EU budget stems from own resources rather than, for example, member states' contributions. This would amount to 12% of total EU revenue. The Commission's vision includes new own resources, such as receiving a share of the tax income stemming from a prospective CCCTB.

Here is a full list of all the documents that constitute the Commission's plans for the EU budget.

European Parliament

Three ECON draft reports on VAT reform published – 2 May

The ECON Committee has published draft reports on three pending Commission VAT proposals: the VAT rates reform, the definitive regime and certified taxable person (CTP), and the special VAT scheme for SMEs. Accountancy Europe engaged with the key MEPs' offices during the drafting process in order to inform their work.

As always on tax files, the European Parliament only provides its non-binding opinion. The member states will make an actual decision by unanimity.

Draft report on VAT rates

The first report, on the VAT rates reform, has been prepared by the MEP **Tibor Szanyi (S&D/HUN)**. In his report, Mr. Szanyi proposes amendments to the Commission proposal to ensure that reduced rates and exemptions benefit

the final consumer. Moreover, he insists that they should be applied to pursue general interest objectives, meaning to prioritise goods or services that have positive social and environmental impacts. For the same reasons, he also proposes a maximum standard VAT rate of 25%. Any additional needed tax revenues should stem from increasing corporate taxes, Mr. Szanyi believes.

In terms of next steps, Mr. Szanyi's report will be voted on in the ECON Committee probably before the summer break in July. A Plenary vote is currently forecasted for 2 October.

Report on definitive regime and CTP

The report on the definitive regime and CTP, in turn, was drafted by the MEP **Jeppe Kofod (S&D/DEN)**. Mr. Kofod welcomes the Commission proposal, including the 'cornerstones' for a definitive VAT system, the 'quick fixes' and the introduction of the new CTP.

However, he calls for further clarifying the requirements for the CTP status, and closely align it with the criteria for Authorised Economic Operator-status under the EU Customs Code. He also calls for a pan-European VAT dispute resolution mechanism, and an automatic notification mechanism to inform taxpayers of changes to member states' VAT rates. This mechanism should be based on standardised data formats and fields in order to ensure interoperability, Mr. Kofod concludes.

For Kofod's report, a Plenary vote is likewise scheduled for 2 October. Thus the Committee vote is again most likely prior to the summer break.

Report on VAT scheme for SMEs

And finally, the report on the special VAT scheme for SMEs has been drafted by the MEP **Tom Vandenkendelaere (EPP/BEL)**. He proposes changes to the original Commission proposal in two main areas.

First, the VAT exemption should constitute a EU-wide regime. Mr. Vandenkendelaere seeks, for example, to harmonise the VAT exemptions threshold by setting both upper and lower limits. He also aims to make it mandatory for member states not to require a VAT return for VAT exempted enterprises. Additionally, he proposes to set up an e-portal through which enterprises willing to avail themselves from the VAT exemption in another member state should register.

Second, Mr. Vandenkendelaere aims to impose administrative simplifications for SMEs. He asks to set up a one-stop shop for VAT returns, enabling the filing of VAT returns from different member states through an e-portal. He also calls for deleting the proposed annual VAT return for small companies, as he believes that it would not imply a real simplification for SMEs.

The Committee vote on Mr. Vandenkendelaere's report is currently forecasted for 10 September.

Plenary discusses future of Europe with Prime Minister of Belgium, tax on the agenda – 3 May

The European Parliament Plenary has held a public hearing with the presence of the Belgian prime minister, **Charles Michel**. As was to be expected, the hearing also focused on tax, with a number of MEPs accusing Belgium of being a tax haven and undermining tax progress at the EU level.

The highlights of the hearing are as follows:

- **Kathleen Van Brempt (S&D/BEL):** the Belgian government is against tax transparency at the EU-level and undermining progress on the financial transaction tax (FTT)
- **Philippe Lamberts (Greens-EFA/BEL):** Belgium should step up the fight against tax dumping and push for harmonisation at EU level for corporate tax. But instead, the Belgian government is stimulating tax planning and undermining EU efforts for tax justice. Belgium remains a tax haven
- **Ana Gomes (S&D/POR):** Belgium is a tax haven for the wealthy and the multinationals. The Belgian tax rulings mean that companies pay low taxes, while workers pay, on average, over 40% of taxes. Belgium is working hard in the Council to preserve tax dumping, making unfair competition possible in the EU. Belgium prevents tax harmonisation. Ms. Gomes also asked the prime minister why Belgium is opposing VAT reform proposed by the Commission
- **Charles Michel:** replying to the MEPs' criticism, the prime minister insisted that taxation is a matter for national decision-making, and it should support economic prosperity rather than function as a punishment tool. On FTT, the prime minister maintained that Belgium alone cannot be held responsible for the file's status. Belgium is a proponent of the file, but ultimately there is insufficient support for it. More progress will probably be achieved at an international level. Finally, the prime minister insisted that the Belgian government has put in place tax reforms to considerably relieve taxation of lower and middle-income earners. The government also wants to look into increasing corporate taxation

Council

Finance Ministers hold informal discussion on digital tax – 27/28 April

The EU finance ministers have held a first exchange of views on the Commission's digital tax proposals under the auspices of an informal meeting that took place in Sofia, Bulgaria.

Expectations prior to the meeting were high, as stakeholders were expecting member states to elaborate further on their national positions towards the Commission proposals. It was, indeed, the first opportunity for the ministers to set out their detailed opinions. These expectations were not disappointed.

In particular, the Commission's proposed 3% tax on certain types of digital turnover is raising an increasing number of eyebrows. According to source from the discussion, 21 member states took the floor during the discussion, but at the same time many of them had no positions set in stone yet.

It will come as no surprise that Malta, Luxembourg and Ireland were most vocal in expressing stringent criticism. However, more surprisingly Denmark, Lithuania Finland, Sweden and the UK appeared to agree with the critics.

On the other side of the barricade, France supported by Spain, Portugal, Slovakia and Poland criticised the sceptics. The French finance minister reportedly dared the critics to go back to their voters to declare that they intend to do nothing about the supposed non-taxation of digital businesses.

Germany, for its part, remained silent during the discussion. Its previously enthusiastic stance towards the turnover tax seems to have shifted to a more cautious stance.

Commissioner Moscovici, for his part, remains optimistic. He believes that there is still a solid ground for political agreement. He also stated after the meeting that the countries that are critical of the proposals are simply louder than the ones in favour.

OECD to publish its final report in 2019?

In parallel, the OECD announced that it might speed up its own work on taxing the digital economy, and publish its final report already in 2019. The previous timetable stated that another interim report would be published in 2019, followed by a final report in 2020.

Member states agree on the need to bolster administrative cooperation on VAT

Finally, the ministers also discussed the need to amend the Council Regulation on VAT administrative cooperation.

Almost all EU member states recognized that more measures to improve VAT collection are necessary, and that trust between tax authorities should be further improved. However, some smaller member states were critical about the possible impact that joint audits could have on their limited capacity.

Council declines cooperation with TAX3 Committee of the European Parliament – 8 May

It appears that the Council is not willing to offer its helping hand to assist the TAX3 Committee in its investigation of harmful tax practices.

The Committee had invited representatives from the Council to attend their public hearing on 15 May on fighting against harmful tax practices. However, the Bulgarian Presidency declined the invitation sent to its finance minister, for timetable reasons. The Bulgarians proposed, instead, to replace the finance minister with the minister of the Bulgarian Presidency or the vice-minister, Monika Panayotova.

On top of timetable clashes, the Bulgarian Presidency reportedly also referred to the political sensitivity of the Council on tax, and emphasised the respective roles of the Council and the European Parliament on tax. The current situation on tax is that the Council decides by unanimity, whilst the Parliament only submits non-binding opinions.

The TAX3 Committee then reportedly proposed a new date for the public hearing with the Bulgarian Presidency. However, the Presidency again declined.

Moreover, according to a letter dated 8 May, **Fabrizia Lapecorella**, the chair of the Council's Code of Conduct Group, also declined the invitation due to agenda clashes. Moreover, she too reminded the Parliament of the balance of powers and responsibilities on tax at the EU-level. She added that the Council already keeps the European Parliament informed on tax matters through the ECON Committee.

International

NEW ZEALAND PROPOSES "AMAZON TAX" IMPOSING GST ON LOW-value offshore sales – 1 May

The New Zealand government has proposed a change in the law that would require offshore suppliers of low-value goods to New Zealand consumers to collect and return GST on those goods.

The move follows Australia's plan to impose GST on low-value imported goods from July 1.

This so-called "Amazon tax" would close a loophole that gives offshore companies selling to New Zealand consumers a competitive advantage over domestic retailers, the government said.

UK requires companies in Caymans, BVI, other territories, to publicly disclose ownership – 1 May

A new law passed by the British Parliament would oblige UK's overseas territories, including Cayman Islands, British Virgin Islands, and Bermuda, must introduce publicly accessible registers of the beneficial ownership of companies located in their jurisdictions before 2021. Otherwise, the UK will require them to do so.

Europol: EU-wide VAT fraud organised crime group busted – 4 May

According to Europol, an organised criminal group involved in pan-European VAT fraud and money laundering has been dismantled in a joint operation led by the Spanish National Police, together with the Spanish Tax Agency and supported by Europol and Eurojust.

The investigation also saw the involvement of national authorities from Belgium, Bulgaria, Germany, Hungary, Italy, Portugal and Romania. In total, the damage caused to the EU economy due to this VAT fraud reached EUR 60 million.

Between 18 and 20 April 58 suspects were arrested in Belgium, Germany, Portugal and Spain and 101 premises were searched in various EU countries. As a result, law enforcement seized 52 luxury cars, numerous documents, EUR 400 000 in cash, IT material and one weapon.

Australia planning tax increase for multinational digital firms, R&D tax incentive changes – 8 May

According to Australia's Treasurer, **Scott Morrison**, the Australian government intends to write new laws to tax digital businesses, crack down on R&D tax incentive abuse, and revise the thin cap provisions, among other initiatives.

The minister said that the government would soon release a discussion paper that will explore options for taxing digital businesses in Australia. He also noted that the Australian government has been working at the OECD level to reach international consensus on the taxation of digital firms.

Spain to propose digital services tax beginning 2019 – 9 May

The Spanish government will propose a temporary tax on digital company revenue this year and will aim for the new tax to take effect in 2019.

The announcement follows the informal meeting of EU finance ministers that took place on 27–28 April in Sofia, Bulgaria (see article above). According to a Spanish official, it is urgent to approve the digital company tax. He said the revenue will be used to fund increased pensions. Furthermore, Spain's new tax on digital companies will be in line with the European Commission's proposal for a digital services tax.

OECD

Bahrain and Saint Lucia join Inclusive FRAMEWORK ON beps – 9 May

Bahrain and Saint Lucia have joined the Inclusive Framework on BEPS, thus bringing to 115 the total number of countries and jurisdictions participating in the Project. The Inclusive Framework brings in countries from outside the OECD's membership to discuss and find consensus on international tax challenges.

OECD invites public comments on future revision of its Transfer Pricing Guidelines – 9 May

The OECD is considering starting two new projects to revise the guidance of the Transfer Pricing Guidelines. Public comments are invited, in particular, on:

- the future revision of Chapter IV, "Administrative Approaches to Avoiding and Resolving Transfer Pricing Disputes" of the Transfer Pricing Guidelines
- the future revision of Chapter VII, "Special Considerations for Intra-Group Services", of the Transfer Pricing Guidelines

Stakeholders are invited to send their comments by 20 June 2018.

Other News

EU AND US TRADE UNIONS: MC DONALD'S STILL ENGAGED IN AGGRESSIVE TAX PLANNING – 14 May

A new report by European and US trade union associations argues that Mc. Donald's continues to engage in harmful tax planning activities.

Three years ago, the same associations published the Unhappy Meal report that revealed how McDonald's avoided paying EUR 1 billion in corporate taxes in at least a dozen EU countries between 2009 and 2013. This new report argues that Mc. Donald's has not addressed the issue in the past three years.

In fact, the report argues that the situation has got worse. Since the 2015 revelations about McDonald's tax structure, the company has only made these structures more complex and opaque. The company has also increased its reliance on shell companies and tax havens – many with links to the UK – with the active support of global equity funds and franchising partners.

More specifically, the report argues that as part of its restructuring, Mc. Donald's has:

- Relocated its international tax base from Luxembourg to the UK
- Transferred the headquarters of McD Europe Franchising Sàrl from Luxembourg to Delaware
- Interposed a range of subsidiaries in multiple jurisdictions between the newly named McD Europe Franchising LLC and its holding subsidiaries with the effect of reducing the level of transparency and information available in McDonald's public filings
- Continues to rely on multiple subsidiaries or related companies in countries listed on the EU's grey list of non-cooperative jurisdictions, including the Cayman Islands, Bermuda and Hong Kong, and partnering with other companies that similarly rely on such jurisdictions including in Guernsey for McDonald's Nordic restaurants and in the British Virgin Islands and the Cayman Islands for McDonald's Chinese restaurants

The trade union associations hope that their report will provide momentum for anti-tax avoidance discussions in the EU, ahead of next year's European Parliament elections. Time will show whether or not these hopes materialise.

MEP Questions & Answers

Margin VAT scheme and double taxation on the sale/purchase of building land – 26 April

The European Commission has replied to a question asked by the MEP **Jean-Paul Denanot (S&D/FRA)** with regard to the margin VAT scheme and double taxation on the sale or purchase of building land.

In his question, Mr. Denanot states that although the sale of building land by taxable persons is subject to VAT in principle, Article 392 of the VAT Directive enables member states to apply a margin VAT scheme to the sale of building land purchased for resale by a taxable person who could not claim back the VAT paid on that purchase. He asks the Commission to confirm that the margin VAT scheme does not apply to building land purchases for resale when the original purchase was not subject to VAT.

In his reply, **Commissioner Moscovici** confirms that where, as a result of building land being exempt and the purchase price contains an element of VAT which cannot be deducted, member states may provide for the taxable amount in respect of such building land to be the difference between the selling price and the purchase price.

Publication of country-by-country information on businesses currently entered in national registers – 26 April

The European Commission has replied to a question asked by the MEP **Pirkko Ruohonen-Lerner (ECR/FIN)** with regard to the publication of CBC information on businesses in national registers.

In her question, Ms. Ruohonen-Lerner points out that large amounts of CBC data is already available in national business registers, albeit often with high prices. She asks the Commission whether it is considering measures to ensure that the information published in national registers of companies is aggregated better in a public register.

In her reply, **Commissioner Jourova** (justice) highlights that currently, EU law already requires member states to ensure compulsory disclosure of certain documents and information by limited liability companies registered in their business registers. This includes accounting documents. However, these are not detailed enough to allow business registers to aggregate those on a CBC basis.

However, EU law also ensures for everybody to have central access to this information via the European e-Justice portal, thanks to the Business Registers Interconnection System (BRIS) which went live in June 2017. A set of basic company information is available through BRIS free of charge (name and legal form, registered office and member state of registration, registration number).

Member states may charge fees for obtaining other information through BRIS provided that those fees do not exceed administrative costs. At present, obtaining documents against a fee is not supported by BRIS. Rather, the documents need to be obtained from national registers. Work is underway to further address this issue.

Finally, the Commissioner confirms that in the context of preparing its recently published Company Law Package, the Commission is also considering further improvements to the system in order to increase its usability and make more data available.

List of EU tax havens and exclusion of Panama – 3 May

The Council has replied to a question asked by the MEP **Marina Albiol Guzmán (GUE-NGL/SPA)** with regard to the EU list of tax havens and the exclusion of Panama from it.

In her question, Ms. Albiol Guzmán argues that Panama was taken off the EU blacklist despite not having made any actual reforms. She therefore asks the Council which criteria were used for the delisting decision, and whether there are plans to impose penalties on EU member states that could be considered to be "tax havens".

In its reply, the Council states that Panama's delisting decision was made on the basis of its objective criteria. However, the exact nature of Panama's commitments cannot be disclosed without the authorisation of Panamanian authorities. The Council also argues that all EU member states are compliant with the screening criteria for the blacklisting process, and highlights that it has already done great progress in passing laws aiming to fight tax avoidance.

Investments in tax havens by the European Investment Bank and the European Bank for Reconstruction and Development – 9 May

The European Commission has replied to a question asked by the MEP **Pirkko Ruohonen-Lerner (ECR/FIN)** with regard to investments into "tax havens" by the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).

In her question, Ms. Ruohonen-Lerner accuses EIB and EBRD of using investment funds registered in "tax havens". She therefore asks the Commission what it intends to do to ensure that capital investment transactions undertaken by EIB and EBRD comply with EU objectives to combat tax havens.

In his reply, **Commissioner Moscovici** refers to the Commission's External Strategy on taxation from January 2016. This strategy made a commitment to reinforce the link between EU funds and tax good governance. As a result, a number of legal acts concerning the use of EU funds by Implementing Partners, such as EIB and EBRD, currently contain or will contain the requirement that EU funds do not support projects contributing to tax avoidance. These provide a robust framework to ensure that EU funding is routed according to good governance standards in the field of taxation.

In addition, both EIB and EBRD have in place internal policies related to the treatment of non-cooperative jurisdictions and broader tax due diligence aspects. The Commission encourages these institutions and their governing bodies to revise their policies within 2018 in order to ensure that these reflect the latest EU and international developments on tax avoidance and fair taxation.

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