ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

28 May – 8 June

HIGHLIGHTS

- Other news: Accountancy Europe assesses potential benefits of tax assurance for tax systems
- Council: digital tax – Nordics turning cold, Malta questions legitimacy, Italy consults
- European Parliament: TAX3 decides on its programme for next months
- European Commission: tax intermediaries proposal published in Official Journal, tax professionals should start preparing
- Council: France and Germany aim for common CCTB position by end-2018
- European Commission: new proposal to improve cooperation between tax and customs authorities

European Commission

Commission proposes expansion of sectoral reverse charge mechanism – 25 May

The European Commission has proposed to extend the reverse charge mechanism on a defined list of goods and services. Moreover, the Commission proposes to extent the Quick Reaction Mechanism in Article 199b(1) of the VAT Directive until 30 June 2022.

The Commission's aim is to enable member states to quickly address missing trader fraud by allowing them to apply the reverse charge mechanism for listed supplies, and offering a faster procedure for the introduction of the reverse charge mechanism in case of sudden and large scale fraud.

It is possible that the proposal is a response to notably Czech Republic's demands to use a generalised reverse charge mechanism applying across sectors, rather than the sectoral approach proposed by the Commission. However, by expanding the scope and time efficiency of the sectoral reverse charge framework, the Commission may be hoping to appease Czech demands.

Whether or not this is enough for the Czechs to lift their veto on the e-publications proposal remains to be seen. Based on the finance ministers' discussions at the last ECOFIN meeting, however, there is not much room for optimism. For further details on the last ECOFIN meeting, please consult Accountancy Europe's Tax Policy Update from 25 May.

Tax intermediaries proposal published in Official Journal, tax professionals should start preparing – 5 June

The European Commission has published on 5 June the final version of the tax intermediaries Directive in the Official Journal. This means that the Directive will officially enter into force 20 days later – on 25 June.

Tax professionals might already now have to start preparing to comply with the Directive's requirements, even if national transposition has not yet taken place. This is because the Directive states that any arrangement that fulfils the hallmarks in Annex IV and whose first implementation step takes place from 25 June 2018 onwards will have to be reported to the relevant tax authority by 31 August 2020.

It remains to be seen how different member states transpose the Directive, which leaves quite some flexibility for national amendments and additions. For example, some member states might add additional disclosure requirements and expand the scope of the Directive to also cover national arrangements – not only cross-border ones.

Commission publishes June infringements package – 7 June

The European Commission has published the latest monthly infringements package which, again, includes a number of tax cases.

Firstly, the Commission has requested Austria to amend its VAT scheme for travel agents. Austria has excluded from its special VAT scheme sales of travel services to other taxable persons who use them for business purposes. The Commission argues that the Austrian VAT scheme for travel agents distorts competition in favour of domestic operators.

Second, the Commission has sent reasoned opinions to five member states - Cyprus, Greece, Ireland, Luxembourg and Romania – for their failure to communicate the transposition of the Directive on Administrative Cooperation granting tax authorities access to anti-money laundering information (DAC V). Moreover, the Commission closed the infringement case against Bulgaria, which has now transposed DAC V.

Additionally, the Commission sent several letters of formal notice. The first one went to the Czech Republic for its failure to correctly transpose new transparency rules for the exchange of information on tax. A second letter was sent to Latvia, which the Commission is requesting to align its rules regarding the VAT reverse charge mechanism, which it sees now as applying the mechanism too widely. Finally, another case against Portugal was cancelled, as it passed legislation to align its exit taxation rules with EU law.

Commission proposes to improve cooperation between tax and customs authorities – 8 June

The European Commission has proposed to render tax and customs cooperation between member states better and more efficient by launcing two new Regulations for Fiscalis and Customs Programmes.

The proposals, including new funding, are made in the context of the EU budget 2021-2027. These two new programmes will take over from the current Customs and Fiscalis programmes, which are due to expire on 31 December 2020. The new budgets for both amount to EUR 950 million for Customs and EUR 270 million for Fiscalis – or 0.07% and 0.02% respectively of the total forthcoming EU budget for the indicated period.

According to the Commission, the new Customs Programme will help put in place a modern Customs Union, while the Fiscalis Programme will support cooperation between member states' tax administrations and better contribute to the fight against tax fraud, tax evasion and tax avoidance.

SO WHAT'S IN IT?

The new Customs Programme's budget will be almost double of the current one, increasing from EUR 523 million over the period 2014-2020 to EUR 950 million for 2021-2027. The new budget aims to assist customs administrations to deal with increased commercial flows, and emerging trends and technologies such as online trade and blockchain technology. Although the programme aims to support cooperation between national customs authorities, it will not support member states' customs equipment.

The new Fiscalis Programme, in turn, also sees an increased budget, albeit a significantly smaller one when compared to the current EUR 223.2 million for the previous period. Here too the objective is to take into account new challenges and improve the digitalisation of resources to tackle tax fraud and tax evasion. This will entail developing and maintaining interoperable IT solutions between tax authorities.

European Parliament

ECON hearings on SME scheme, definitive regime, VAT rates – 28 May

The ECON Committee of the European Parliament has held three public hearings on key VAT files: the SME simplification scheme, the definitive regime and VAT rates reform.

All three files will be voted on in the ECON Committee in the next few months to come. The actual decision, of course, will be taken unanimously by member states. However, the European Parliament's non-binding opinion will be necessary for member states to move ahead. For the time being no agreement between member states is in sight – especially with regard to the definitive regime, which is subject to significant disagreements in the Council.

For more information on ECON's draft reports on all three files, please see Accountancy Europe's Tax Policy Update from 11 May.

Hearing on special scheme for SMEs

This file is led by the rapporteur **Tom Vandenkendelaere (EPP/BEL)**. During his opening remarks, the rapporteur stressed that harmonisation under the special scheme for small enterprises must be secured across member states so that SMEs that want to trade across borders can more effectively do so.

Mr. Vandenkendelaere rejected the Commission's proposal that VAT declarations should be submitted on an annual basis. Instead, he proposes an online portal for more regular declarations, and stated that the service would provide much more flexibility for SMEs.

Moreover, the Commission proposed a uniform EU-wide EUR 100,000 turnover exemption threshold for smaller businesses. The rapporteur, instead, recommends an upper and lower limit amounting to EUR 50,000 and EUR 15,000, which he believes will give companies more flexibility.

Overall, MEPs who took the floor supported the proposal to simplify cross border VAT procedures, with several of them emphasising that this is crucial to stimulating cross-border business. Some divergence emerged, in particular, on the exemption thresholds.

Alfred Sant (S&D/MAL) welcomed the rapporteur's work, but proposed to stick to the Commission's proposed EUR 100,000 threshold whilst granting member states the flexibility to set their own lower thresholds. **Sander Loones (ECR/BEL)**, for his part, welcomed the online portal but would prefer to keep the threshold under full national discretion. **Caroline Nagtegaal (ALDE/NLD)** would prefer to stick with the Commission's original proposal's approach on thresholds.

At the end of the debate, a representative of the European Commission spoke about the 12% weighted average VAT rate in the Commission proposal. She reasoned that this was included as a safeguard so fiscal soundness would not be jeopardised. This weighted average rate is calculated by DG BUDG, but the calculation method is not publicly available. According to the representative, the 12% reflects the current situation, meaning that all member states have VAT rates above this amount.

A vote in ECON Committee is currently expected for 11 July.

Hearing on the definitive regime and the certified taxable person (CTP)

This file is led by the rapporteur **Jeppe Kofod (S&D/DEN)**. In his opening remarks, he commented on the CTP. After consulting with stakeholders, Mr. Kofod has concluded that the main issue with the proposed CTP is the lack of a clear definition.

He has aimed to provide more clarification on the CTP by linking CTP to the already established notion of an authorised economic operator under the EU customs code. On digitalisation, the rapporteur highlighted the need for introducing automatic notices of VAT transactions. And finally, the lack of trust between national tax administrations remains a main impediment for the definitive regime, the rapporteur emphasised.

The other MEPs who took the floor welcomed the rapporteur's claim that the proposal would lead to a significant reduction in VAT fraud across the EU. Particular discussion emerged on what defines a CTP.

Ivana Maleti (EPP/HUN) questioned whether the Parliament is capable of identifying CTP criteria that are fit for purpose. She referred to having seen documents claiming that only 2% of taxpayers would be eligible to benefit from the CTP status.

Sander Loones (ECR/BEL) was concerned about whether even potentially eligible smaller companies could benefit from the CTP status. He warned that many of them they lack the financial means to access consultants who could advice them on how to operate within the VAT system.

Molly Scott Cato (Greens-EFA/UK), for her part, was in favour of defining clear criteria for CTPs. She highlighted that the status should only be given to trusted taxpayers, and for example called for CTP applicants to not have committed a serious crime such as money laundering offences, and to have a registered bank account.

The ECON Committee is currently scheduled to vote on the draft report on 3 September.

Hearing on VAT rates reform

The third file, on VAT rates, is led by the MEP **Tibor Szanyi (S&D/HUN)**. During the ECON discussion, he re-iterated his calls to prevent using reduced VAT rates on harmful or luxury products. He also highlighted that a standard rate may not be lower than 15% and cannot be higher than 25%. Furthermore, he noted that the Commission had introduced a weighted average rate of 12%, and stated that he agreed with this figure.

Finally, in order to facilitate cross-border trade and particularly for SMEs, the rapporteur called for a EU VAT portal. The portal should provide quick and relevant information to businesses on VAT matters across the EU – including on applicable rates.

MEPs from other political Groups were broadly supportive, with **Sander Loones (ECR/BEL)** welcoming the VAT portal proposal as well as granting member states more flexibility on setting their national rates. **Caroline Nagtegaal (ALDE/NLD)**, for her part, stated that her political Group supports the rapporteur's proposals overall. **Molly Scott Cato (Greens-EFA/UK)** was along the same lines, but stated that her Group would table amendments to for example propose common percentages for the reduced and super-reduced rates.

The ECON Committee is currently expected to vote on the file on 3 September, followed by a Plenary vote possibly on 2 October.

Plenary hearing with the Prime Minister of Luxembourg – 30 May

The European Parliament Plenary has held a hearing with the Prime Minister of Luxembourg, **Xavier Bettel**. Several MEPs are suspicious of Luxembourg in particular due to its tax regime, some going as far as referring to the country as a EU based tax haven. This was, therefore, an opportunity for the Prime Minister to engage on a dialogue and give him a forum to address some of these concerns and criticism.

During his opening speech, the Prime Minister re-iterated his commitment to OECD standards on tax, and warned against short term solutions (probably thinking about the digital services tax proposal from the Commission). He explained that fair digital taxation is crucial, but in cooperation with the OECD. He also reminded that tax harmonisation does not automatically mean tax increasing.

In response, **Manfred Weber (EPP/GER)** – the President of the centre-Right EPP Group – emphasised that the tax discussion should focus more on VAT. **Philippe Lamberts (Greens-EFA/BEL)** criticised Luxembourg's tax system for being too lenient on multinational companies, to which the Prime Minister responded that his country is "no longer" a tax haven. Subsequent remarks came from many MEPs who are usually not prominent in the European Parliament's tax debates. Most of them, especially the S&D ones, called for fairer taxation and continued the criticism against Luxembourg's enabling role in "unfair tax competition" and "aggressive tax planning".

Apple turns down invitation to TAX3 Committee hearing – 1 June

Apple has declined an invitation from the European Parliament to attend a hearing of the TAX3 Committee. The company argues that its participation at the hearing is not possible due to the ongoing court case to determine whether or not the company is liable to pay Ireland EUR 13 billion in unpaid taxes.

The MEP **Sven Giegold (Greens-EFA/GER)** was one of many others to express outrage at Apple's refusal to appear in front of the Committee. He accuses the company of disrespecting democracy, and calls for the revocation of Apple lobbyists' access into the European Parliament. "No company is above democracy", Mr. Giegold concludes.

TAX3 Coordinators decide on programme for the Committee in the next months to come – 4 June

Coordinators of the TAX3 Committee have held regular meetings in past months to determine the Committee's agenda and priorities. The transcripts and decisions of the latest coordinators' meetings have now been published (see here and here).

According to these documents, the TAX3 Committee is to hold the following meetings before the summer break:

- 21 June: hearing on Paradise Papers, focusing on discussing possible loopholes in tax legislation in Europe as well as the role of large companies and intermediaries. A number of large multinationals (Mc. Donald's, Nike, Apple – which recently declined the invitation) have been invited, whilst the intermediaries' side will be represented by Appleby – assuming that they accept the invitation
- 25 June: focusing on the Council's work on tax files, including the role of the Code of Conduct Group. With **Commissioner Jourova** also invited, we should expect the hearing to also focus on anti-money laundering
- 28 June: meeting to discuss the use of tax fraud – including VAT fraud – for terrorist financing

The meetings in autumn will focus on digital taxation, the role of third countries, the impact of Brexit and prospect of the UK turning itself into a 'tax haven', VAT fraud, golden visas and follow-up on the recommendations from TAXE I, II, ECON and PANA Committees (the latter on 27 November).

Timeline for the Committee report

As for the TAX3 Committee's draft report, a first version will be published on 9 November. A first discussion on the draft report is to take place on 27 November. The deadline for amendments is 17 December, and a Committee discussion on the amendments in "early January" 2019. TAX3 will vote on the draft report in late-February, followed by a final Plenary vote either in late-March or April.

TAX3 hearing on cryptocurrencies, digital taxation and European Semester – 7 June

The TAX3 Committee of the European Parliament has organised a workshop on taxation and money laundering in the context of cryptocurrencies, the digital economy and the European Semester's new focus on national regimes that promote aggressive tax planning. The workshop consisted of three sessions.

First session: cryptocurrencies and blockchain

During the first session, **Professor R. Houben** presented the legal context of virtual currencies and blockchain, and mapped the implications for financial crime, money laundering and tax evasion against the backdrop of the existing EU legislation. He recommended, notably, widening the scope of the Anti-Money Laundering Directive and introducing targeted bans to prohibit the use of cryptocurrencies for certain transactions or by certain actors.

One possibility, according to Professor Houben, would be to introduce a license to carry our cryptocurrency transactions. He did admit the practical difficulties of such a targeted approach, but felt that it is nevertheless a necessary step in order to have at least the necessary framework in place. He also warned against disproportionate bans or restrictions that might hamper wider innovations using the blockchain technology.

Second session: Impact of digitalisation on international tax matters

During second panel, **Ms. Eli Hadzhieva** discussed digital taxation as well as progress on OECD BEPS measures. She argued that whilst some BEPS recommendations can be expected to address concerns stemming from the digital economy, much work remains ahead as BEPS implementation is up to national lawmakers.

Speaking at the same session, **Professor J.Vella** reflected on the potential benefits, challenges and risks of the digital economy and measures introduced to tax digital businesses. He emphasised that digitalisation of the economy is not the source of the problems, but rather exacerbates existing ones.

The main risk for the economy, ultimately, stems from uncertainty. Currently, countries either believe that targeted measures are necessary (as proposed by the Commission), that a more fundamental reform of the tax system is needed (as called for by the European Parliament and Professor Vella agrees), or that BEPS already goes far enough. At this stage, it is impossible to predict which approach will prevail.

As a solution, Professor Vella argued for a destination-based tax system. More accurately, taxing places where companies' immobile factors are, including where the shareholders or consumers are located. Although he sees this as the ideal solution, he acknowledged that the political feasibility of it is in great doubt as there will inevitably be winners and losers – at least in the short term.

Third session: aggressive tax planning in the context of the European Semester

During the last session, **Valère Moutarlier** from the European Commission's DG TAXUD presented the Commission's strategies against aggressive tax planning as part of the European Semester.

During his presentation, Mr. Moutarlier stressed that the European Semester reports were based on impartial economic evidence and analysis of aggressive tax planning indicators. He also confirmed that there has already been some dialogue with the seven member states identified in the reports, and that progress is being made. He hoped that this dialogue would generate political momentum for tax reforms in EU member states themselves.

After Mr. Moutarlier's opening presentation, **Jeppe Kofod (S&D/DEN)** commended the Commission for its work but criticised the Council and the Code of Conduct Group for slowing down progress on tax. Mr. Moutarlier replied that member states' focus now is to address profits leaving the EU for third jurisdictions. Thus the member states for example continue their discussions on the Interests and Royalties Directive (IRD), although the effective minimum taxation clause remains a block. Moreover, member states are currently discussing counter-measures against non-cooperative third jurisdictions.

Danuta Jazłowiecka (EPP/POL) actually criticised the Commission for including aggressive tax planning in its European Semester. She emphasised that member states find it challenging enough to implement the Semester recommendations as it is, without adding to the complexity and volume of the recommendations. Mr. Moutarlier replied that fiscal matters have always been a part of the European Semester, and that the Commission had to act due to possible spill-over effects of national tax regimes.

Council

Code of Conduct Group plans to revise its criteria for non-cooperative jurisdictions – 24 May/1 June

The Council's Code of Conduct Group is set to revise its criteria for identifying non-cooperative jurisdictions.

In particular, the Group is likely to assess whether to include the exchange of beneficial ownership information as a fourth transparency criterion, as well as the implementation of OECD BEPS recommendations. It appears that for now most member states agree on the BEPS inclusion, but that for the time being only BEPS Action 13 on CBCR is advanced enough to enable EU assessment.

A number of member states have also pointed out that EU countries themselves should first comply with the criteria, before imposing them on third jurisdictions. With regard to expanding the geographical scope of the blacklist, it appears that most member states are not keen to go down this path. They would first prefer the current list to be properly consolidated, and feel that the riskiest jurisdictions are already covered anyway.

In the meanwhile, the Council has published further commitment letters received from third jurisdictions. The latest ones are from Bermuda and Switzerland.

Digital tax: Nordics turning cold, Malta questions legitimacy, Italy consults – 1/4/7 June

The politicisation of the European Commission's digital tax proposals continues to gather momentum, as a number of EU member states position and re-position themselves in the debate.

Most notably, Sweden, Finland and Denmark have published a joint statement on the Commission's proposals. In the statement, the Nordic finance ministers question the rationale in the Commission's proposals, call for an international agreement first and foremost, and emphasise the importance of a favourable climate for innovative businesses.

In parallel, the Maltese Parliament has also issued a position statement on the Commission proposals. In particular, Malta argues that the proposals are in breach of the principle of subsidiarity.

For its part, Italy has reportedly launched a stakeholder consultation on the Commission proposals. Italy's consultation focuses on whether the country should support the Commission proposals and, in particular, the digital services tax ('short-term measure'). The consultation runs until 22 June.

This appears to mark a visible switch from Italy's previous, evidently enthusiastic approach towards EU measures targeting the digital economy. The country seems to be adopting a more cautious stance. Either way, with the new government we may yet see even more fundamental changes in Italy's position to one way or the other.

And finally, Germany's position remains blurry at best. It has changed from an initial enthusiasm to subsequent scepticism – fearing US retaliation against its car industry – to something even more ambiguous.

In summary, the battle lines are still forming, three months after the Commission launched its proposals.

Tax cooperation between France and Germany progresses – 5 June

The Franco-German cooperation on tax appears to be gaining momentum, according to an official from the German Ministry of Finance.

Both countries are fully committed to CCTB, and intend to publish a joint position paper on the proposal by the end of 2018. Other EU member states are not part of this cooperation, but have been informed about it. Germany in particular has sought to ensure, however, that only corporate taxpayers and not for example partherships are included in the proposal's scope.

Moreover, both countries insist that they are not looking to tinker with corporate tax rates, but wish to prevent a "race to the bottom". However, the resistance from smaller member states remains a headache for the Franco-German efforts.

Court of Justice of the EU – Rulings

C-382/16: Calculation of the taxable revenue of companies – 31 May

The Second Chamber of the CJEU has ruled that TFEU does not preclude national legislation pursuant to which the income of a company resident in a member state which granted to a company established in another member state with which it has a relationship of interdependence advantages under terms that depart from those that would have been agreed on by unrelated third parties under the same or similar circumstances, must be calculated as it would have been if the terms which would have been agreed with unrelated third parties had been applicable, and be corrected, despite the fact that such a correction is not made in respect of taxable income when the same advantages are granted by a resident company to another resident company with which it has a relationship of interdependence.

However, it is for the national court to determine whether the legislation at issue in the main proceedings affords the resident taxpayer the opportunity to prove that the terms were agreed on for commercial reasons resulting from its status as a shareholder of the non-resident company.

C-660/16 and C-661/16: Deduction of input tax – 31 May

The Fifth Chamber of CJEU has ruled that a potential buyer may not be refused the right to deduct VAT relating to a payment on account in respect of the goods in question where that payment has been made and received and where, at the time that payment was made, all the relevant information concerning the future supply could be regarded as known to that buyer and the supply of those goods appeared to be certain. However, that buyer may be refused that right if it is established, having regard to objective elements, that, at the time the payment on account was made, he knew or should reasonably have known that that supply was uncertain.

Moreover, the VAT Directive does not preclude a national law or practice which has the effect of making adjusting the VAT relating to a payment on account for the supply of an item conditional upon that payment being refunded by the supplier.

C-49/17: taxation of energy products – 6 June

The First Chamber of the CJEU has ruled that Article 21(3) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity must be interpreted as meaning that the consumption of energy products, within the curtilage of an establishment that has produced them, for the purpose of producing other energy products does not fall within the exception, laid down in that provision, concerning the chargeable event giving rise to taxation where, in a situation such as that at issue in the main proceedings, the energy products produced by virtue of the main activity of that establishment are used for purposes other than as motor fuels or as heating fuels.

International

Norway's Parliament Rejects 'Google Tax' Proposal – 29 May

The Norwegian parliament has rejected a so-called Google tax proposal, which would have introduced a tax on digital business models. Instead, the parliament calls on the government to engage on the matter at the OECD level.

The initial proposal, which was now rejected, requested the government to investigate options for the taxation of value creation in Norway by online platforms with no taxable physical presence in the country.

Latest digital tax updates from around the world – 29 May

Despite the counter-momentum that is now emerging within the EU and certain third countries (e.g. Norway, see above) against initiatives to tax the digital economy, several other jurisdictions are proceeding with their own measures.

Taxamo has published a helpful overview of these various developments on a region-by-region basis. These include South-East Asia, the Gulf region, as well as a more detailed analysis of Argentina's planned measure. A more comprehensive, global overview is available here.

US to provide guidance for taxpayers on international aspects of its tax reform – 4 June

It appears that the US intends to publish guidance for taxpayers on the international aspects of its tax overhaul. The guidance would address, in particular, GILTI and BEAT.

With regard to GILTI, the main issue to address is the interaction between the measure and expense allocations. On BEAT, the US Administration will seek to address potential "harsh effects" that it might have in particular on international banking and insurance and on some service industry models.

The additional guidance might be published as soon as in July.

Britain hints at staying in European VAT area after Brexit? – 7 June

According to the Financial Times' interpretation, the UK may be considering to stay in the EU VAT area even after Brexit.

FT bases its assumption on a leaked letter, according to which the UK government "aims to keep VAT processes after EU exit as close as possible to what they are now". A major concern for the UK is the potential VAT revenue losses from online sales and mail order from the EU after Brexit.

However, this would mean that the UK will remain bound by EU rules and the Court of Justice of the EU. This was supposed to be one of Theresa May's red lines, so it remains to be seen whether the UK remaining in the VAT area is a real prospect.

OECD

Paraguay joins Multilateral Convention on tax – 29 May

Paraguay has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, making it the 119th jurisdiction to join the instrument aiming to boost transparency and combat cross-border tax evasion. The Convention is notably a cornerstone for the implementation of the automatic exchange of CBCR information under BEPS Action 13.

Other News

UEAPME comments on VAT rates reform and special scheme for SMEs – 30 May

The Brussels-based association representing Europe's SMEs, UEAPME, has published position papers on the Commission's proposed VAT rates reform and the special scheme for SMEs.

On VAT rates reform, UEAPME emphasises that any liberalisation of VAT rates should not lead to further fragmentation in the Single Market or additional burdens for businesses.

Thus, for example UEAPME supports the introduction of additional reduced VAT rates if the EU provides a fully functioning online portal in all its languages, and if it is ensured that companies can rely on the information received from it. The web portal should inform companies automatically on changes of rates and rules in other countries. Moreover, UEAPME maintains that a single VAT rate – reduced or normal – should apply independently of whether the buyer is a private person or a company.

On the special scheme for SMEs, UEAPME welcomes the possibility to make VAT exemptions available also for cross border activities of small enterprises, and to allow micro enterprises to profit from simplification even if they are not exempted in particular. However, UEAPME is also concerned about additional risks to create unfair competition between SMEs which can profit from exemptions and those that cannot.

Furthermore, UEAPME recommends not introducing a national threshold next to the overall EU threshold of EUR 100.000. And finally, companies that are eligible to benefit from the SME simplification scheme should have the option to opt out of it, if they so wish.

Accountancy Europe examines potential benefits of tax assurance – 31 May

Accountancy Europe has issued a new publication that examines the concept of 'tax assurance', and assesses its potential benefits for taxpayers and tax authorities in the context of co-operative compliance and beyond.

Tax administrations are increasingly relying on so-called cooperative compliance programmes. Under cooperative compliance, a tax administration will apply a lighter touch approach to taxpayers that can reliably demonstrate that they have stringent internal control processes in place to minimize the risk of tax related errors and anomalies. This will enable tax administrations to better focus and target their limited resources, whilst incentivizing businesses to take extra compliance steps that are not strictly required by law.

To provide this comfort for tax administrations, professional accountants could provide tax assurance services. This service entails assessing the quality of a client's tax control systems and confirming to the tax administration whether or not they live up to requirements.

Professional accountants can use their skills to help clients design systems that mitigate tax-related risks. Auditors can apply their skills to provide assurance on a client's tax control framework. The publication also covers practical aspects professionals should keep in mind when providing such services.

MEP Questions & Answers

Legal action against off-the-shelf tax-avoidance packages – 31 May

The European Commission has replied to a question asked by the MEP **Paul Tang (S&D/NLD)** with regard to off-the-shelf tax avoidance packages.

In his question, Mr. Tang asks the Commission whether it sees the "standardisation of tax avoidance" as a negative phenomenon, how the tax intermediaries Directive's hallmarks will prevent such practices, and what it has done about the open advertisement of aggressive tax planning arrangements.

In his reply, **Commissioner Moscovici** confirms that standardized tax avoidance is an unwelcome development. Moreover, he points out that one of the hallmarks in the tax intermediaries Directive is specifically targeting standardized tax arrangements. And finally, he state that with more transparency on arrangements, he would expect advertising on pre-packaged schemes to decrease as well.

Crypto-currency taxation – 31 May

The European Commission has replied to a question asked by the MEP **Jonathan Arnott (EFDD/UK)** with regard to crypto-currency taxation.

In his question, Mr. Arnott asks the Commission whether it intends to regulate crypto-currency trading, and whether crypto-currencies will fall within the scope of a prospective financial transaction tax (FTT). In his reply, **Vice-President Dombrovskis** states that the Anti-Money Laundering Directive (AMLD) has already been extended to virtual currency exchanges and custodian wallet providers. Moreover, the Commission's Fintech Action Plan points to the need for an assessment of current EU regulatory framework's suitability for crypto-assets. He furthermore insists that the Commission will continue monitoring crypto-asset developments. Based on this assessment, the Commission will consider whether further EU regulatory action is required.

Finally, with regard to FTT the Vice-President insists that this requires a case-by-case analysis of crypto-currency transactions. In particular, this should include considerations as to whether the transactions amount to the purchase, sale or exchange of a financial instrument or the conclusion of a derivatives contract.

US Foreign Account Tax Compliance Act (FATCA) – 8 June

The European Commission has replied to a question asked by the MEP **Luke Ming Flanagan (GUE-NGL/IRL)** with regard to the US FATCA.

In his question, Mr. Flanagan points to the extraterritorial impact and requirements that FATCA imposes on certain EU citizens (e.g. 'accidental Americans'). He therefore asks the Commission whether it considers FATCA to be in line with EU law, and whether it can come up with a solution to protect 'accidental Americans'.

In his reply, **Commissioner Moscovici** contends that US rules on tax residence are unusual but have been accepted at international level and are reflected in the US bilateral tax treaties. Moreover, there have been no instances where FATCA would have seemingly breached European rules. As the exchange of information aims to ensure the correct assessment of tax liabilities and can only be used for tax purposes, it is not a breach of fundamental freedoms.

The Commissioner also mentions that discrimination against consumers residing in the EU would be in breach of the Payment Accounts Directive (PAD), but this is up to national authorities to assess. So far, only one national authority received FATCA-related complaints.

Events

- 19/06/2018, ***Digital Day – Opportunities in innovation***, Accountancy Europe, Brussels. Source
- 05/07/2018, ***Fair Tax Event - Stop the corporate tax race to the bottom***, S&D Group, The Hague. 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