ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

11 – 22 June

HIGHLIGHTS

- European Parliament: TAX3 organises hearing on Paradise Papers
- Council: Austrian Presidency publishes priorities, tax high on the agenda
- Council: Bulgarian Presidency prepares first compromise text on digital services tax
- Council: public CBCR remains in stalemate
- Council: Franco-German bilateral cooperation on tax takes leaps forward
- Council: ECOFIN agrees on several major VAT files, but stalemate on "quick fixes"

European Commission

Commission publishes latest Taxation Trends study – 13 June

The European Commission has published its latest taxation trends report. According to the report, tax revenues rose in 19 member states in 2016 as a percentage of GDP.

However, the level of taxation across the EU differs greatly. The report also shows that the share of labour taxes in total tax revenues shrank progressively from 2010 to 2016 when it accounted for 49.8% - similar to its pre-crisis level. Corporate income tax revenues, on the other hand rose to 2.7% of GDP in 2016 compared with 2.6% in 2015, continuing their gentle increase since the crisis though not yet at pre-crisis levels.

The report contains a detailed statistical and economic analysis of the tax systems of all 28 EU member states, plus Iceland and Norway.

European Parliament

Plenary hearing with Prime Minister of the Netherlands – 13 June

The European Parliament has held a public Plenary hearing with the Prime Minister of the Netherlands, **Mark Rutte**. During the hearing, several MEPs accused the Netherlands of facilitating aggressive tax planning.

For example, **Ska Keller (Greens-EFA/GER)** accused the Netherlands of not only being a "tax haven", but also for blocking progress on tax files at the EU-level. **Paul Tang (S&D/NLD)** insisted that the Prime Minister is in no position to criticise EU budget spending while his own country is a "tax haven". **Ana Gomes (S&D/POR)**, for her part, lamented about the large number of Portuguese companies using the Netherlands as a tax haven.

In his reply to the MEPs, the Prime Minister insisted that taxation is a member state competence, but acknowledged the important of fighting against tax havens. He also emphasised that the EU should stick to its core areas – which he listed as Single Market, migration and climate change.

ECON hearing with Commissioner Vestager – 18 June

As part of its structured dialogue programme, the ECON Committee has held a hearing with **Commissioner Vestager**. Inevitably, taxation also emerged during the discussion given Ms. Vestager's work on the tax state aid cases involving large multinationals such as Starbucks and Apple.

In her opening remarks, the Commissioner re-iterated the Commission's rationale behind its tax state aid decisions. Essentially, the Commission fears that member states granting special tax treatment for certain multinationals may undermine fair competition, especially for SMEs. Currently, the Commission is looking into McDonald's and Engie in Luxembourg, the UK controlled foreign company rules as well as Ikea in the Netherlands.

During the debate, **Nils Torvalds (ALDE/FIN)** asked the Commissioner whether "oligopolies and monopolies" in the EU could be taxed in a way that would provide new income for the EU's own resources. In her reply, the Commissioner emphasized the need to update the core concepts of corporate taxation. These include how value is created and what is a taxable presence. These two issues must be resolved in the light of the digital economy in particular, the Commissioner highlighted. She lamented that digital businesses pay on average 9-10% effective taxes, whilst their non-digital counterparts pay 23-24%.

Ramón Jáuregui Atondo (S&D/SPA) lamented about tax competition between member states, and criticised the apparent lack of progress in this area. In her response, the Commissioner reminded that many actions have already been taken by the Council on tax, and stressed that implementation is key. Therefore, tax authorities must have sufficient and capable staff to actually take advantage of notably new transparency legislation. She also stressed that member states have also committed to change their own legislation, which should help reduce tax challenges.

ECON hearing with OECD Secretary-General – 18 June

ECON has held a public hearing with the OECD's Secretary-General, **Angel Gurría**.

The meeting's main purpose was to discuss the OECD's Economic Surveys of the EU and Euro Area 2018, which were published on the same day. However, the debate touched upon a wide range of topics including EMU, Banking Union, employment, structural reforms, the need to complete the single market and, of course, taxation.

Ludek Niedermayer (EPP/CZE) asked Mr. Gurria for the OECD's views on the EU moving faster ahead with certain tax files, such as digital taxation. Mr. Gurria replied that the OECD aims to produce its digital tax proposals in 2019. In the meanwhile, he insisted that the EU should avoid short-term measures that could make it more difficult to find a long-term solution.

How, where and at what rate to tax digital companies are questions that should be resolved at the global level in order to prevent the creation of new tax havens. He argued that there is now a lot of convergence and good will between OECD members, and for example the Americans and the British are starting to provide input to the debate.

Dariusz Rosati (EPP/POL), for his part, asked the Secretary-General whether countries should base their taxation on direct or indirect sources. Mr. Gurria replied that the current trend for countries is to move away from corporate and labour taxes in favour of VAT, property and green taxes in a bid to create growth-friendly business environments.

ECON votes on VAT Administrative Cooperation proposal – 18/19 June

The ECON Committee has voted on its non-binding opinion on the Commission proposal for better VAT administrative cooperation, including provisions concerning the certified taxable person (CTP). The file is led by the MEP **Roberts Zile (ECR/LAT)**.

The draft report was passed in the ECON Committee by 51 votes in favour, 2 against and 3 abstentions. As a next step, the report will be adopted by the European Parliament Plenary, probably on 3 July. This European Parliament's opinion on the Commission proposal is needed in order for it to become EU law, but the actual decision is made by unanimity between all 28 EU member states – as always on tax files.

For more information on Mr. Zile's original draft report, please see Accountancy Europe's Tax Policy Update from 27 April.

Debate before the vote

The day before the vote, the ECON MEPs held what was a very consensual discussion on the draft opinion. Most ECON MEPs across the political Groups had rallied behind key positions in the report concerning the CTP as well as requests for administrative inquiries.

At the beginning of the debate, **Ludek Nidermayer (EPP/CZE)** explained – on behalf of Mr. Zile who was absent – that the rapporteur had re-introduced the concept of CTP into his draft opinion. Readers may recall that Mr. Zile initially proposed to remove the CTP concept from the draft opinion altogether. Moreover, the rapporteur now proposes that only one member state, and not two or more, is enough to request an administrative inquiry and joint audits.

Olle Ludvigsson (S&D/SWE), for his part, emphasised his support for the CTP concept, and insisted that it should be possible for tax authorities to carry out investigations in other member states. **Molly Scott Cato (Greens-EFA/UK)** also expressed support for the CTP, but highlighted that there must be clear and robust criteria for it. On joint audits, Ms. Cato was aligned with the other political groups as described above.

TAX3 hearing on Paradise Papers – 21 June

The TAX3 Committee has held a public hearing on the Paradise Papers scandal. The hearing consisted of two panels, each with external panellists relevant for the topics: the first panel focused on whether the Paradise Papers provided evidence of possible loopholes in EU legislation. The second panel, in turn, focused on "aggressive tax planning schemes" within the EU, and saw representatives from Mc. Donald's and Nike.

First panel – are there loopholes in EU legislation?

The first brought together representatives from the OECD and the Guardian as well as a researcher on tax fraud. The debate touched upon loopholes in legislation and what can be done to help journalists and whistleblowers.

Lucía Rossel Flores – a researcher at the project "Combating Fiscal Fraud and Empowering Regulators (COFFERS) – provided an overview of the project's state of play. **They currently seek to evaluate the utility of new instruments to combat tax avoidance through empirical evidence. This means that they need access to information.**

A particular focus at the moment is to study how different actors, be it regulators, intermediaries or taxpayers, react to new legislation. The COFFERS researchers believe that there will be loopholes in new legislation too. Ms. Flores also welcomed the Paradise Papers, which offered them a lot of this much needed empirical evidence. It also demonstrated that a lot of the problems are related to not only companies, but also individuals.

She finished by applauding that Paradise Papers provided additional transparency that is essential to combat tax fraud. However, ultimately tax transparency must be enforced through regulation, she insisted.

Jeppe Kofod (S&D/DEN) asked the panellists whether they believe that public CBCR could provide meaningful added value in the fight against aggressive tax planning. In response, **Achim Pross** from the OECD reminded that **the OECD has issues with public CBCR as it is not sure that it is fit for purpose. There is also a danger of double taxation. Finally, Mr. Pross remarked that there are no great calls for public CBCR outside of Europe. He also noted** that currently an estimated EUR 240 billion is lost to tax avoidance, but insisted that the OECD's BEPS **measures would help tackle this effectively.**

Finally, Tom Vandenkendelaere (EPP/BEL) brought up the role of intermediaries, and called for representatives of intermediaries to be invited to future hearings of the Committee. Achim Pross replied that both the OECD and the EU are putting forward measures to force intermediaries to disclose information about certain tax arrangements. Juliette Garside from the Guardian lamented, in this context, that in the UK the tax authorities' budget has been **slashed significantly. Moreover, it appears that** the UK is unwilling to actually take tax arrangement cases to court. Ultimately, only public checks can help ensure that enforcement actually happens, she concluded.

Second panel – tax planning by multinationals

The second panel hosted representatives from Mc. Donald's and Nike. Both representatives presented their companies and their approaches to tax.

In her opening presentation, **Irene Yates** from Mc. Donald's called for c**larity, consistency and simplicity of legislation, as well as global rules and guidelines. She called for a unilateral implantation of BEPS. Moreover, she argued that** their tax structure is aligned with their business structure, and that tax does not drive Mc. Donald's' **business decisions.**

Patricia Johnson from Nike, in turn, highlighted her company's contributions to the EU economy. She also argued that Nike's tax structure represents their business structure, and complies with OECD guidelines as well as EU laws.

In the following Q&A with the MEPs, Mc. Donald's in particular received a lot of criticism, as MEPs questioned its **corporate structure and reasons for re-locating to Luxembourg. Many of them made reference to the Unhappy Meal report published recently by a trade union alliance (see earlier Tax Policy Update for more information on the report). However, Ms. Yates insisted that tax was not a driving motivator behind these measures.**

Max Andersson (Greens-EFA/SWE) sarcastically congratulated McDonald's for paying the taxes that it cannot avoid. She then asked the companies whether they would agree to introduce voluntary public CBCR in order to restore their public image. Ms. Yates replied that there is no legal requirement for public CBCR, and that Mc. Donald's **will stick to disclosing such information to tax authorities only. Public disclosure would risk exposing sensitive**

commercial data. These views were echoed by Ms. Johnson from Nike, who insisted that public CBCR should only be shared with and between tax authorities.

After the hearing, many MEPs lamented the lack of detail and expressed their overall disappointment. The companies are expected to submit additional written input at a later date.

Absence of companies criticised

Although Mc. Donald's and Nike accepted the invitation to attend the hearing above, many other companies turned down their invitations. **Petr Ježek (ALDE/CZE)**, the Chair of TAX3, referred to refusals by Apple and Kering Group. The former refused due to ongoing legal proceedings that allegedly prevent it from commenting publicly, the latter because its CEO was unavailable on the day. Appleby and Baker McKenzie also refused, but apparently for unclear or obscure reasons.

In response, **Dariusz Rosati (EPP/POL)** proposed to set up a blacklist of non-cooperative companies that disregard the European Parliament. The aim of the list would be to publicly name and shame these companies, and to block them from accessing the EU institutions. This proposal echoes a similar one made by the Greens-EFA Group a few weeks ago.

The TAX3 coordinators will meet on Monday 25 June to decide on next steps following the hearing and the non-cooperation of certain organisations.

Council

Austrian Presidency publishes its priorities for Q2 2018, tax high on the agenda – 6 June

The Austrian Presidency has published its priorities for its term, running from July to December 2018. As was to be expected, tax will be relatively high on Austria's agenda.

On tax, the document calls for protecting public budgets against harmful tax competition, tax fraud and tax evasion and to modernise tax rules in view of globalisation and new technologies. In particular, the EU needs to take strong and unequivocal positions vis-à-vis its international partners, especially when it comes to taxation of the digital economy, the document explains.

The Austrian Presidency will, therefore, attach particular importance to this issue in a bid to advance the negotiations and to outline potential solutions in light of the developments at G-20, OECD and EU levels. Reportedly, the Presidency aims for a political agreement on the short-term measure by the end of its term. The Austrians will also continue to work on the CCTB proposal.

On VAT, the Austrian Presidency plans to achieve progress on "numerous" Commission proposals. The aim is to strengthen the Single Market, efficiently fight fraud and ensure cooperation between tax administrations. No specific mentioning is made on the definitive regime.

Council publishes additional commitment letters – 11/13 June

The Council has again published letters of commitment received from third countries. This time, the published letters come from Bahamas and the Turks and Caicos Islands.

Code of Conduct Group publishes overview of reviewed tax regimes – 12 June

The Council's Code of Conduct Group has published an overview of all tax regimes it has examined since 1998. The document does not include extensive descriptions of the regimes themselves, but elaborates on whether or not each of them were deemed "harmful".

Bulgarian Presidency proposes changes to digital tax proposal – 13 June

The Bulgarian Presidency has prepared a first compromise text on the digital services tax (DST), which was studied by EU member states' technical experts on 13 June.

The compromise text includes certain changes to the Commission's original text and contains a series of questions prepared by the Presidency. On the basis of this text, the major current points of contention can be identified.

First issue is the threshold. As a reminder, the Commission proposal has a threshold of EUR 750 million annual turnover and EUR 50 million turnover from digital services. The Presidency proposes to remove the latter threshold and seeks member states' views on revising these numbers.

Another change proposed by the Presidency relates to the country of identification. In the Commission proposal, companies that are liable for the tax in two member states may choose a country of identification where the tax will be paid. The Presidency, however, proposes to remove this option, and instead force the company to pay the tax in the country where a higher amount is payable. Once this member state of identification is identified, it must remain unchanged for two consecutive tax periods unless the taxpayer ceases to be liable for the tax in that country.

The Presidency has also removed a provision allowing member states to adopt measures to prevent tax evasion and abuse of the DST. The Presidency sees this provision in the proposal as superfluous.

Despite an increasing number of member states expressing doubts about the DST, the upcoming Austrian Presidency is aiming to reach a political agreement by the end of the year. France and Germany have also established this as their common objective.

Netherlands To Champion EU VAT Law Change For Cost-Sharing Groups – 14 June

The Dutch Ministry of Finance has announced that it seeks to resolve at EU level the issue around VAT rules concerning cost-sharing groups, following the Court of Justice of the EU's rulings in DNB Banka (Case C-326/15) and Aviva Towarzystwo (Case C 605/15).

Article 132(1)(f) of the EU VAT Directive provides an additional exemption for certain activities that are in the public interest. The exemption allows persons who carry on these activities to join together to form a cost-sharing group (CSG) so that they can acquire services and recharge their members for their use of the services at cost without incurring any additional sticking VAT.

However, the rulings preclude insurance or financial services from benefiting from the exemption, arguing that these services cannot be said to be in the public interest. By implication, the cost-sharing exemption may no longer apply to banks, insurance businesses, financial services businesses, and suppliers of land and property, which previously could qualify. This risks resulting in significant costs for those previously benefiting from the exemption.

As a result, the Dutch Secretary of State for Finance, **Menno Snel**, has committed to fixing the situation at the EU-level. He also stated that a number of other member states are on board with any such efforts.

Still no progress in public CBCR discussions – 14 June

Member states' national experts have re-convened at another meeting to find common ground on the question of public CBCR. The proposal has been blocked so far as a number of member states led by Germany insist that it is a tax file, not corporate reporting, and as such should be subject to unanimity decision making.

Despite some hopes, however, this latest meeting did not bring any new progress. Apparently, Germany merely stated that its new government was still working on its position. The Bulgarian Presidency assessed that the text still does not have sufficient support for it to be put on the EU member states' ambassadors' table.

Technical work on the file has finished and the only remaining issue is the legal base question. Austria, which will take over the Council Presidency from Bulgaria in July, is amongst the member states opposing the current legal base.

Key MEPs have already expressed their disappointment at the continuing stalemate in the Council.

France and Germany publish joint statement on CCTB and call for EU-wide FTT – 19 June

The Franco-German cooperation on tax, as also reported in the last Accountancy Europe's Tax Policy Update, is already taking visible steps forward.

The countries have published a joint statement in which they commit to reach a EU agreement on fair digital taxation by the end of 2018. In the statement, they also re-iterate their commitment to corporate tax convergence between the two countries.

The countries have also agreed on a common position on the Commission's CCTB proposal, which they will promote jointly in order to support and accelerate progress on the file at the EU level. According to the position, France and Germany call for the CCTB to apply to all companies regardless of size, and exclude tax incentives for R&D or equity financing. However, it does not appear to specify how German partnerships would be treated.

Other changes to the Commission proposal include the following:

- Cross-border loss relief would only be considered during the second CCCTB step – if at all
- The calculation of the tax base should follow uniform accounting rules and be determined by a so-called operating assets comparison
- Deductions will be limited if payments are made to a country with low taxation
- The transition period for a harmonized corporate tax system should be four years

Finally, the French and German finance ministers have reportedly proposed resuming talks on a financial transaction tax (FTT) — and extending it to the whole EU. So far, the FTT negotiations only involved a coalition of a willing 10 member states. The Austrian finance minister **Hartwig Löger** confirmed the news, saying that "we need to evaluate this proposal … and will speak about it further at our next meeting." As an appeasement to countries, the new FTT would be deducted from the amount countries pay into the EU budget.

ECOFIN on VAT – 22 June

EU finance ministers met at the June ECOFIN to, notably, agree on a number of VAT files. That is, on all except one on VAT quick fixes which will have to be worked on further in the future, as France and Italy vetoed the compromise.

Agreement on several VAT files

On the plus side, member states adopted without issues the EU-Norway VAT Agreement. It provides a legal framework for administrative cooperation in preventing VAT fraud and mutual assistance in recovering VAT claims.

The member states also adopted the Commission's proposal for making the 15% minimum standard VAT rate permanent, even in the context of an eventual future definitive VAT regime.

And finally, member states adopted the Regulation to improve administrative cooperation to combat VAT fraud. This is the file which member states attempted to adopt already at the May ECOFIN, but was blocked by France. See Accountancy Europe's Tax Policy Update from 25 May for further details.

Amongst other things, this Regulation will improve the exchange and analysis of information shared by the member states' tax administrations and with law enforcement bodies. It will also strengthen Eurofisc, a network of national tax officials for the exchange of information on VAT fraud. The Regulation will be formally adopted once the European Parliament has given its non-binding opinion.

Where agreement failed – quick fixes

On another file, however, no agreement was reached and a serious stalemate looks increasingly likely, as Italy and France vetoed a prospective political compromise. The file in question concerns the so-called quick fixes for VAT, ahead of more fundamental reforms of the EU vat system.

Here is a useful overview of the Council negotiations on the recent VAT files, including the quick fixes one.

In October 2017, the European Commission proposed four VAT quick fixes concerning:

- Simplified treatment for call-off stock regimes
- The identification number of the client to benefit from a VAT exemption for intra-Community deliveries
- Standard criteria for chain transactions
- A common framework for the documentary evidence required to apply for a VAT exemption for intra-Community deliveries

For further details on the Commission proposal, please see Accountancy Europe's Tax Policy Update from 13 October 2017.

There is broad consensus between the member states on these four quick fixes. However, the current stalemate is the result of a fifth new quick fix, which was not in the initial Commission proposal: a VAT exemption for groups of taxpayers that pool services and share costs. The latest compromise of the Bulgarian Presidency on the fifth quick fix establishes a "territoriality clause" which limits the scope of the exemption to groups established in member states that decide to use the option.

France and Italy made their endorsement of the four quick fixes conditional to the rest of the member states agreeing with the fifth quick fix. However, a number of member states and, especially, the European Commission are against the fifth fix, for several reasons:

- The Commission fears that it would harm the integrity of the Single Market
- Limiting its application to only one member state could hinder freedom of establishment
- This fifth quick fix was not part of the Commission's original proposal, and it might therefore violate the Commission's right of initiative

Austria was sympathetic to the Franco-Italian cause, but was willing to agree to proceed with the fifth quick fix if the Commission commits to addressing the issue as part of a new, separate proposal. **Commissioner Moscovici**, at the debate, immediately made such a commitment.

This was not good enough for France and Italy, however, who insisted that they will have to see the "full picture" before they can agree to the four quick fixes. This means that they will only agree to them if the fifth quick fix is also included, or after seeing and being satisfied with a new separate Commission proposal addressing pooling of services and cost sharing. Thus their decision to veto the proposal this time.

Other miscellaneous items from the ECOFIN

The ministers also approved Conclusions concerning the Code of Conduct Group, on the basis of a report submitted to the ministers regarding the Group's activities. The Conclusions, notably, call on the Group to further work on common defensive measures against non-cooperative third jurisdictions.

The Code of Conduct Group's report, in turn, provides an overview of the work of the Group in the first half of 2018 under the Bulgarian Presidency. It notably emerges from the report that:

- The Group agrees to its Chair attending a hearing of the TAX3 Committee at "a future date" and in the "spirit of cooperation"
- The Group will work towards a concrete guidance note on defensive measures against non-cooperative jurisdictions, rather than recommending legislative measures
- The Group will continue working towards including beneficial ownership transparency as a new criterion for the list of non-cooperative jurisdictions
- The Group aims to start screening from 2019 the G20 countries that have not yet been covered by the EU listing exercise

The report also includes in the annex a new multiannual work package, as well as new guidance on the interpretation of the third criterion of the Code. These were also now endorsed by the finance ministers.

And finally, the ministers approved a report to the European Council (consisting of EU heads of government) on the recent tax activities of ECOFIN. The report provides an overview of the progress achieved in the Council during the term of the Bulgarian Presidency, as well as an overview of the state of play of the most important dossiers under negotiations in the area of taxation – both direct and indirect.

Court of Justice of the EU – Rulings

C-650/16: Deductions on losses incurred by a permanent establishment – 12 June

The Grand Chamber of the CJEU has ruled that TFEU precluded member state legislation under which it is not possible for a resident company which has not opted for an international joint taxation scheme to deduct from its taxable profits losses incurred by a permanent establishment in another member state where, first, that company has exhausted the possibilities of deducting those losses available under the law of the member state in which the establishment is situated and, second, it has ceased to receive any income from that establishment, so that there is no longer any possibility of the losses being taken into account in that member state, which is for the national court to ascertain.

Case C-665/16: VAT and the transfer of the ownership of a property – 13 June

The Seventh Chamber of CJEU has ruled that the VAT Directive must be interpreted as establishing that a transfer of ownership of immovable property belonging to a taxable person for VAT purposes to the Public Treasury of a member state, carried out in accordance with the law and in return for a payment of compensation, constitutes a transaction subject to VAT in a situation where the same person simultaneously represents the expropriating authority and the municipality that is the subject of the expropriation and where the latter continues the practical management of the relevant property, even if the payment of compensation has been made only by means of an internal accounting transfer within the budget of the municipality.

C-421/17: VAT on transfer of share transactions – 13 June

The Seventh Chamber of the CJEU has ruled that the VAT Directive must be interpreted as meaning that the transfer by a limited company to one of its shareholders of the ownership of immovable property, made as consideration for the buy-back, by that limited company, under a mechanism for the redemption of shares provided for in national legislation, of shares held in its share capital by that shareholder, constitutes a supply of goods for consideration subject to VAT provided that that immovable property is used in the economic activity of that limited company.

C-480/16: Tax exemption for dividends – 21 June

The Fifth Chamber of the CJEU has ruled that TFEU precludes legislation of a member state under which the dividends distributed by a company resident in that member state to a non-resident undertaking for collective investment in transferable securities (UCITS) are subject to withholding tax, while dividends distributed to a UCITS resident in that same member state are exempt from such tax, provided that that undertaking makes a minimum distribution to its members, or technically calculates a minimum distribution, and withholds on that actual or notional distribution the tax payable by its members.

C-108/17: evidence of dispatch or transport of goods for VAT purposes – 20 June

The Fourth Chamber of the CJEU has ruled, notably, that the VAT Directive precludes the competent authorities of a member state from refusing a VAT exemption on importation on the sole ground that, following a change of circumstances after the importation, the goods in question have been supplied to a taxable person other than the person whose VAT ID was stated in the import declaration, where the importer has communicated all the information on the identity of the new purchaser to the competent authorities of the member state of import, provided that it is shown that the substantive conditions for the exemption of the subsequent intra-Community supply are actually satisfied.

The ruling establishes additional interpretations for the case in question. For the full case and the additional interpretations, please see the link provided above.

International

Liechtenstein amends its tax code as a result of EU 'tax haven' listing – 7 June

Liechtenstein's parliament has approved a set of reforms aiming to render the country compliant with the EU's requirements and avoid being listed on the EU list of non-cooperative jurisdictions.

The Council's Code of Conduct Group called on Liechtenstein to make adjustments in several areas of its tax legislation in order to address, for example, the following:

- Lack of anti-abuse provisions on dividends, capital gains and nominal interest deductions
- Asymmetric treatment of capital gains and capital losses

G7 leaders re-iterate their commitment to fair taxation and finding consensus on digital tax by 2020 – 9 June

At a recent G7 Summit characterized by great controversy, the leaders of six out of the seven G7 member countries (i.e. excluding the US) endorsed joint conclusions that also include commitments in the area of tax. In ambiguous yet still notably meaningful wording, the leaders notably commit to the following:

- Exchange approaches and support international efforts to deliver "fair, progressive, effective and efficient tax systems"
- Continue to fight tax evasion and avoidance by promoting the global implementation of international standards and addressing base erosion and profit shifting
- Welcome the OECD interim report analyzing the impact of digitalization of the economy on the international tax system. Commit to work together to seek a consensus-based solution by 2020

Tax evasion deprives the EU of 20% of corporate taxes – 11 June

Euractiv reports on recent figures claiming that 40% of multinationals' profits avoid taxation. Thus, the EU would be deprived of a fifth of the tax revenue it is supposed to collect from companies. The figures are based on a new report titled *Missing profits* by a group of economists. It is based on data collected from alleged "tax havens" such as Ireland and Bermuda.

British overseas territories in talks to keep tax haven secrecy – 13 June

Notably the Guardian reports that UK overseas territories are attempting to reverse a decision by the British government which would impose on them public share ownership registers. The territories fear that the end to tax secrecy will undermine the financial services industries on which their local economies depend. They also claim that the move is unconstitutional, and some (e.g. Cayman Islands) are even considering a constitutional separation between the British mainland and its overseas territories.

Irish Corporate Tax Reform Pushed By MPs, To Shore Up Tax Base – 14 June

The Public Accounts Committee (PAC) of the Irish parliament has concluded that the country's dependence on corporation tax income constitutes an "unacceptable level of risk" for its economy.

PAC reached these conclusions in its new report focusing on Ireland's corporation tax yields. According to the report, corporation taxes accounted for 15% of total tax receipts in 2016, with 70% of all corporation taxes paid by the top 100 companies and 37% paid by just 10 companies.

PAC recommends for the Irish finance ministry to conduct a review of the corporation tax system and publish proposals for dealing with the high concentration of corporation tax yields.

US tax reform drains more dollars from global economy than Fed – 19 June

According to the Financial Times, US companies repatriating profits drained more dollars from global markets in the first quarter of 2018 than the Federal Reserve's actions to shrink its balance sheet did. **Steven Blitz**, an economist at the consultancy TS Lombard, argues that this was in large part due to recent US tax reforms, which included incentives for companies to repatriate profits held overseas until now.

OECD

Liberia signs Multilateral Convention on Mutual Administrative Assistance in Tax Matters – 11 June

Liberia has signed the Convention on Mutual Administrative Assistance in Tax Matters.

The Convention provides a comprehensive multilateral framework for the exchange of information and assistance in tax collection. Its coverage includes administrative assistance between tax authorities for information exchange on request, automatic exchange of information, simultaneous tax examinations and assistance in the collection of tax debts.

Consultation on how developing countries can use tax incentives to attract investors – 18 June

The OECD and the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) have published a draft toolkit to help governments anticipate and limit the costs of mining related tax incentives. Stakeholders are invited to provide comments on the draft toolkit by 6 July 2018.

OECD releases new guidance on hard-to-value intangibles and the transactional profit split method – 21 June

The OECD has released two reports containing Guidance for Tax Administrations on the Application of the Approach to Hard-to-Value Intangibles (BEPS Action 8), and Revised Guidance on the Application of the Transactional Profit Split Method (BEPS Action 10).

The new guidance for tax administration on the application of the approach to hard-to-value intangibles (HTVI) aims for a common understanding and practice among tax administrations on how to apply adjustments resulting from the application of the approach.

The revised guidance on the profit split method, in turn, retains the basic premise that the profit split method should be applied where it is found to be the most appropriate method to the case at hand. However, it significantly expands the guidance available to help determine when that may be the case. It also contains more guidance on how to apply the method, as well as numerous examples.

State Aid

Commission finds Luxembourg gave illegal tax benefits to Engie – 14 June

The European Commission has found that Luxembourg allowed two Engie group companies to avoid paying taxes on almost all their profits for about a decade. The Commission claims that this is illegal under EU state aid rules because it gives Engie an undue advantage over its competitors. Luxembourg must, therefore, recover about EUR 120 million in unpaid tax.

Other News

GUE-NGL PUBLISHES NEW REPORT LOOKING INTO APPLE'S TAX PLANNING PRACTICES – 21 June

The far-Left GUE-NGL Group of the European Parliament has published a new report looking into Apple's tax planning practices. The report is titled *Apple's golden delicious tax deals: Is Ireland helping Apple pay less than 1% tax in the EU?*

The report was published on the same day as the TAX3 Committee hearing to which Apple declined to attend (see article above).

The report's claims, notably, the following:

- Apple has no geographical disclosure of profits and taxes wherever it operates
- Apple might be paying as little as 0.7% tax on its EU profits
- Ireland plays a crucial role in Apple's company structure with five of its seven most significant subsidiaries incorporated in that country
- The Irish government has been slow or reluctant to phase out legal loopholes, and Apple does not disclose any financial information from its Irish subsidiaries that are taking advantage of Irish financial secrecy allowance for unlimited liability companies

MEP Questions & Answers

Current status of the notification procedure on the German Law on Harmful Tax Practices – 13 June

The European Commission has replied to a question asked by the MEP **Martin Schirdewan (GUE-NGL/GER)** with regard to the notification procedure on the German law concerning harmful tax practices.

In his question, Mr. Schirdewan refers to the German Income Tax Act (EStG). He asks the Commission what is the current status of its notification procedure with regard to Section 3a of the EStG, as introduced by the Law on Harmful Tax Practices in connection with transfers of rights, and which provides for a tax exemption for reorganisation income. In her reply, **Commissioner Vestager** confirms that Germany has notified the Commission of Section 3a of EStG, for state aid purposes. The Commission's assessment is still ongoing, however, and will need more time.

Brexit and tax competition – 14 June

The European Commission has replied to a question asked by the MEP **Pirkko Ruohonen-Lerner (ECR/FIN)** with regard to Brexit and tax competition.

In her question, Ms. Ruohonen-Lerner refers to the prospect of the UK turning itself into a 'tax haven' after Brexit. She asks the Commission how it will assess the risk of "harmful tax competition" after Brexit, what it will do to prevent the UK from undermining EU's efforts against harmful tax competition, and whether it sees Brexit as posing a challenge from a money laundering perspective.

In his reply, **Commission President Juncker** emphasises that any future free trade agreement to be concluded with the UK must ensure a level playing field with respect to, notably, competition and state aid, and tax. He also states that the UK could be subject to scrutiny by the EU's 'blacklist' of non-cooperative jurisdictions on tax. On money laundering, although the UK will no longer be bound by EU law, it should still adhere to international standards.

Holiday rental platforms required to hand over EU citizens' tax information to US tax authority – 15 June

The European Commission has replied to a question asked by the MEP **Sophia in 't Veld (ALDE/NLD)** with regard to holiday rental platforms being obliged to hand over tax information of EU citizens to the US tax authority.

In her question, Ms. in 't Veld argues that internet platforms for renting out holiday accommodation such as Airbnb and TripAdvisor must collect taxpayer information from EU citizens who host guests through these platforms outside of the US, and hand this over to the US federal tax authority. Apparently, the reason for this is to certify whether the host is a US citizen, and therefore determine whether the earnings received through these platforms are subject to US tax reporting under FATCA.

She therefore asks the Commission whether it is aware of the practice, whether it believes that the practice is in line with EU's data protection rules, and whether it will put an end to it.

In his reply, **Commissioner Moscovici** states that the aim of the data collection is merely to ensure that all relevant taxpayers pay their tax liabilities. As such, the data collection does not seem to infringe EU law. Individual cases of potential data protection infringements will have to handled by national authorities. The Commission believes that the rules are adequately enforced by member states.

Dramatic reduction in effective corporate tax rates after the 2008 crisis – 18 June

The European Commission has replied to a question asked by the MEP **Dimitrios Papadimoulis (GUE-NGL/GRE)** with regard to the reduction in effective corporation tax rates since the 2008 financial crisis.

In his question, Mr. Papadimoulis laments that multinationals – especially in manufacturing and technology sectors – have seen a "dramatic" decrease in their corporation tax rates since the 2008 crisis. In turn, natural persons have seen an increase in their tax liabilities. He asks the Commission what it will do to address this "blatant tax injustice", how much corporation taxes have decreased in the EU since 2008, and what is the state of play with the digital tax and CCCTB proposals.

In his reply, **Commissioner Moscovici** lists all recent relevant EU initiatives aiming to tackle harmful tax practices and introduce greater transparency. He also states that corporation taxes have on average fallen from 23.8% in 2008 to 21.9% in 2018. 15 member states had lower rates in 2018 than in 2008, four had higher rates and the rest were unchanged. The rates themselves ranged from 10% to 35%. For effective taxes, the overall average tax rate fell from 21.3% in 2008 to 20.1% in 2017. The rate dropped in 17 member states, and increased in 10. Across the EU, the effective average tax rate varied from 9% to 33.4%.

On digital taxes and CCCTB, the Commissioner simply re-iterates his commitment to ensure that both are adopted "as quickly as possible".

Removing the Bahamas from the EU list of non-cooperative jurisdictions for tax purposes – 21 June

The European Commission has replied to a question asked by the MEP **Werner Langen (EPP/GER)** with regard to the removal of Bahamas from the EU's list of non-cooperative jurisdictions.

In his question, Mr. Langen asks the Commission on what grounds Bahamas was removed from the EU 'blacklist'. In his reply, **Commissioner Moscovici** emphasises that the Bahamas was treated the same way as all screened jurisdictions, and provided "high political level" reassurance to the Code of Conduct Group that it will address all the issues and concerns identified by it. The Commission is involved in technical discussions to ensure that Bahamas follows up on its commitments and should it not, it may be returned to the blacklist.

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
- 17/09/2018, ***US tax reform conference***, AICPA & CIMA, London. 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