

## Tax Policy Update

25 June - 6 July

### HIGHLIGHTS

- European Commission: new public consultation on evaluating the EU's invoicing rules
- European Parliament: several TAX3 Committee hearings on tax and VAT fraud
- Council: EU leaders re-iterate commitments to digital tax and VAT reform

### European Commission

#### Commission launches public consultation on the evaluation of invoicing rules - 13 June

The European Commission has launched a [public consultation](#) to evaluate EU's invoicing rules. The deadline for responding is 20 September.

The scope of the consultation is to collect data and evidence needed to evaluate the invoicing rules introduced by the second Invoicing Directive (Directive 2010/45/EU). The Commission seeks, in particular, stakeholder views on how the Second Invoicing Directive met its objectives and to what extent the invoicing rules are still aligned with stakeholders' needs. The aim of the consultation is also to enquire stakeholders' views on possible ways of reform.

In particular, the data gathered through the consultation should allow identification and quantification of the regulatory costs, benefits, savings and burden reduction and simplification potential for businesses generated by the invoicing rules. Special focus will be on e-invoicing. Data gathered through the consultation should allow to measure and better understand the uptake of electronic invoicing in the EU.

#### Commission updates VAT guidelines - 6 July

The European Commission has [published](#) updated VAT guidelines. The new guidelines include input from December 2017 meetings of the VAT Committee.

# European Parliament

## TAX3 Committee hearings on tax fraud, including VAT – 28 June

TAX3 Committee has held two hearings on tax fraud. The first one focused on the use of tax and VAT fraud for terrorist financing, whilst the second focused on VAT fraud specifically.

These hearings demonstrate yet again the wide scope of TAX3's mandate, which ranges from tax avoidance to evasion, VAT fraud, money laundering, golden visas, 'tax havens' and digital taxation. This is in stark contrast to the previous two TAXE Committees, whose main emphasis was still corporate tax avoidance. PANA Committee already started to broaden the mandate from that.

### The role of tax fraud in terrorist financing

The [first one](#) of the two hearings was held jointly with the European Parliament's TERR Committee – the special Committee on terrorism.

The hearing focused on the use of VAT and carousel fraud to finance terrorism, bolstered by a panel of experts. The debate highlighted the need for more cooperation and exchanges of information between authorities, and emphasised the need for robustly implementing adopted legislation, including the fourth Anti-Money Laundering Directive (AMLD IV).

**Elena Hach** from Romania's National Office for Prevention and Control of Money Laundering (FIAU) emphasised that cooperation between law enforcement authorities and private sector experts is needed to effectively tackle VAT fraud. Europol's **Pedro Seixas Felicio**, for his part, singled VAT fraud out as the largest form of fraud ongoing in Europe. He also emphasised the need to reform EU's current VAT system, which was supposed to be temporary.

**Ana Gomes (S&D/POR)** criticised the slow pace of VAT reform by member states, who are blocking or slowly progressing on a number of key VAT files in the Council. She also hinted at close links between 'certain' member state governments and criminal networks. Finally, she enquired about the use of cryptocurrencies for terrorist financing.

In response, both **Marius-Christian Frunza** from Schwarzthal Kapital as well as Mr. Seixas Felicio acknowledged the potential of cryptocurrencies and, increasingly, crowdfunding platforms for terrorist financing. However, they also emphasised that for the time being their scale for such purposes is relatively small. Having said that, both called for keeping a close eye on developments. Mr. Seixas Felicio added that any entity that behaves like a bank should be treated as a bank. Ms. Hach, for her part, insisted that cryptocurrency platforms should be subject to closer scrutiny by authorities.

### Particular challenges of VAT fraud

The [second hearing](#) brought together another panel of experts to discuss ways to reduce VAT fraud. Member states' cooperation in the fight against fraud notably via Eurofisc, as well as how innovation can help reduce VAT fraud or in turn be used for fraud, were also discussed.

**Neven Mates** from the European Court of Auditors lamented the lack of a systematic effort to tackle VAT fraud at the EU-level. This would require a bottom-up assessment of the grey economy per country. Mr. Mate encouraged the European Commission to organise the collection of standardised data on this, which is currently only done by Belgium and the UK.

**Richard Murphy** from Tax Justice Network, in turn, criticised member states for not tackling even domestic VAT fraud meticulously enough. He thus questioned how effective EU-level action would be, when member states themselves are not willing to take the fight against VAT fraud seriously. He also insisted that national tax authorities require more resources than they currently have at their disposal. Finally, robust turnover reporting is the key, Mr. Murphy emphasised.

**Malte Fabregas Fernandez** from the European Commission spoke about the definitive regime, and presented the main Commission proposals for reforming the EU VAT system. She insisted that member states agree in principle with the definitive regime, but that they require further details before making up their final positions. A key issue remains the lack of trust between member states. In order to bolster this trust, the Commission is encouraging joint audits, and organising meetings between the heads of national tax administrations to discuss issues of concern.

**Jeppe Kofod (S&D/DEN)** asked the panellist about the added value of the Certified Taxable Person (CTP) concept. Mr. Murphy was sceptical, since he feels that it will create barriers for smaller businesses.

**Arndt Khon (S&D/GER)** raised the point of external audits in the UK. Richard Murphy replied that there are currently no external audits in the UK at the moment due to a lack of personnel in the tax administration. He remarked that now that this "threat" has disappeared, biggest companies are more encouraged to avoid paying taxes.

## ECON Committee hearing on VAT files – 2 July

The ECON Committee has held further discussions on the Committee's work on three key VAT proposals: the special scheme for SMEs, VAT rates reform and the definitive regime. The files are led by the MEPs **Tom Vandenkendelaere (EPP/BEL)**, **Tibor Szanyi (S&D/HUN)** and **Jeppe Kofod (S&D/DEN)**, respectively.

During their respective hearings, each of the rapporteurs explained the state of play on ECON's internal negotiations on the file, and elaborated on the main points of contention. Committee votes on each of the files is scheduled for the next few days, followed by final Plenary votes during autumn.

As a reminder, on these three files the European Parliament may only submit its non-binding opinion. Member states will make the actual decisions by unanimity – the usual tragedy (or blessing) of tax work at the EU-level, depending on one's point of view.

### Special scheme for SMEs

A total of [61 amendments](#) (AMs) were tabled by ECON MEPs to Mr. Vandenkendelaere's report.

Overall, it appears that most political Groups are on the same page concerning the draft report as well as the AMs to be introduced. However, **Alfred Sant (S&D/MAL)** opposed the new proposed lowering of the VAT exemption thresholds further. He also objects a proposed AM that would increase the SME definition to companies with EUR 4 million turnover (as opposed to the initial EUR 2 million) – a level he considers to be too high.

Another exception is the Eurosceptic ECR Group. **Stanisław Ozóg (ECR/POL)** stated that member states should have the freedom to maintain shorter declaration periods if they so wish, and lamented the impact that common EU rules for a SME special scheme could have on member states' budgets. Therefore, he concluded, ECR cannot support the proposal. Having said that, the proposal is still likely to pass the ECON vote.

In terms of next steps, ECON will vote on the file on 11 July. A Plenary vote is currently scheduled for 11 September.

### VAT rates reform

For the VAT rates draft report, in turn, a total of [66 AMs](#) have been tabled.

During the debate, Mr. Szanyi emphasised that there is cross-Group agreement for his draft report as well as the direction of some of the AMs. The MEPs stand together in supporting the destination principle, as well as the introduction of one additional reduced rate. Mr. Szanyi also called for an up-to-date online portal that would provide relevant data for companies on the VAT rates of different member states.

Some disagreements still exist, notably between the Greens and EPP, on the question of reduced and super-reduced rates, for example.

In terms of next steps, an ECON vote is scheduled for 3 September. Plenary, for its part, is currently scheduled to vote on 2 October.

## Definitive regime

Finally, for the definitive regime draft report [95 AMs](#) were tabled.

Mr. Kofod emphasised that he sees a solid compromise. He insists on three points, however, that there should be no weakening of the text or loosening of the scope. **Burkhard Balz (EPP/GER)** wondered whether the Certified Taxable Person (CTP) concept should not be introduced by the definitive regime, rather than as a quick fix. If it is to be introduced now the concept and the criteria for attaining the CTP status should be further clarified.

The ECON vote is expected for 3 September, followed by a Plenary vote probably on 2 October.

## Plenary votes on VAT Administrative Cooperation – 3 July

The European Parliament Plenary has voted on **Robert Zile's (ECR/LAT)** [draft report](#) on VAT administrative cooperation. The vote passed by 568 votes in favour, 56 against and 56 abstentions.

The Parliament's now approved report attempts to improve the balance between data privacy on the one hand, and better information exchange between relevant authorities to tackle VAT fraud. The report also proposes for information to be exchanged between Eurofisc and Europol.

Member states already reached a political consensus on the Commission proposal at the June ECOFIN. The adoption of Mr. Zile's report in Plenary means that the proposal can become EU law. However, as always on VAT and tax files, the European Parliament's opinion does not need to be taken into account.

## Plenary debate and vote on FATCA resolution – 4 July

The European Parliament Plenary has approved a Motion for Resolution on the US FATCA and so-called 'accidental Americans'. The Motion was adopted by 470 votes in favour, 43 against and 26 abstentions. It was drafted by the MEP **Cecilia Wikström** on behalf of the petitions Committee (PETI).

The Motion focused, in particular, on the practical difficulties and burdens faced by EU-US double citizens. By virtue of their US citizenship, these individuals are subject to certain additional requirements and unequal treatment due to FATCA's provisions.

The vote on the Motion was preceded by a hearing with the European Commission and the Austrian Presidency. The hearing focused, in particular, on FATCA's impact on EU citizens. According to the MEPs, as many as 100.000 EU citizens who are also US citizens either unknowingly or without ties to the country, are denied access to basic payment services by EU financial institutions due to the bureaucratic and costly hurdles of either receiving a US social security number or for renouncing the US citizenship.

The MEPs insist that accidental Americans should have alleviated and free means to get rid of their US citizenship. Moreover, they call on the Payment Accounts Directive (PAD) to be properly transposed. PAD guarantees all EU citizens the right to access a payment account regardless of their nationality. Finally, the MEPs argue that FATCA is a violation of not only certain EU Directives but also fundamental rights, and called on the EU to pursue a common, united response to FATCA.

In response, both the Council and Commission insisted that it is impossible to provide a concerted EU response to FATCA given that EU member states have preferred to deal with FATCA bilaterally with the US.

## TAX3 publishes study on cryptocurrencies, blockchain and illicit financial activities – 6 July

TAX3 Committee has published a new [study](#) focusing on the link, challenges and opportunities between cryptocurrencies, blockchain and illicit financial activities.

The focus is, in particular, on the criminal use of cryptocurrencies for illegitimate activities like money laundering, terrorist financing and tax evasion. The authors note that even though the full scale of misuse of virtual currencies is unknown, its market value has been reported to exceed EUR 7 billion worldwide.

The study focuses on these phenomena from a legal perspective, and contains policy recommendations for future EU standards in the area.

## Council

### Additional Commitment Letter published – 20 June

The Council continues the publication of commitment letters received from third countries, in the context of the EU list of non-cooperative tax jurisdictions. The latest published commitment letter is from the [British Virgin Islands](#).

After being criticised for a lack of transparency in listing and de-listing third countries, the Council decided that it would publish the political commitments for tax reforms received from the screened jurisdictions. The commitment letters are only published if the concerned jurisdiction gives its approval.

### EU Summit re-iterates commitment to digital tax and VAT – 28 June

EU Heads of Government held a major EU summit in June, focusing mostly on migration and Brexit. However, in the post-summit [Conclusions](#), the leaders re-iterate their commitment to advancing with tax work at the EU-level.

More specifically, the Conclusions call on the Council to “take work forward” on the two digital tax proposals. On VAT, member states call for further work to ensure effective “VAT collection”, including swift progress on the Commission proposals on short-term measures.

As such, the Conclusions offer little new. In terms of digital tax, the wording is probably as ambiguous as possible with all EU member states endorsing it. However, the Franco-German block has committed to concluding the file by the end of the year, and reportedly the Austrian Presidency might be aiming for a political agreement on the digital services tax (DST) as early as at the 6 November ECOFIN.

On VAT, it is interesting to note that previous leaked versions of the summit Conclusions referred to advancing work on the single VAT area. However, probably because several member states are feeling increasingly uneasy about the definitive regime, the wording was changed to something milder.

## Court of Justice of the EU – Rulings

### C-459/17 and C-460/17: turnover taxes and right to deduct input tax – 27 June

The Sixth Chamber of the CJEU has [ruled](#) that EU law relating to turnover taxes must be interpreted as meaning that, in order to deny a taxable person in receipt of an invoice the right to deduct the VAT appearing on that invoice, it is sufficient that the authorities establish that the transactions covered by that invoice have not actually been carried out.

### C-203/16 P: Germany's restructuring clause is not illegal state aid – 28 June

The Second Chamber of CJEU has [ruled](#) that Germany's restructuring clause is not illegal state aid. The ruling goes against an earlier European Commission decision, which claimed that the clause constitutes a breach of state aid rules. Under the German restructuring clause, loss carry-forwards may be retained if the shares are transferred for the purpose of restructuring the corporate entity. It was introduced in the aftermath of the financial crisis in 2009.

### deduction from resident permanent establishments – 4 July

The First Chamber of CJEU has [ruled](#) that TFEU does not preclude, in principle, national legislation pursuant to which the resident companies in a group are permitted to deduct, from their group profits, the losses sustained by a resident permanent establishment of a non-resident subsidiary of that group only in the case where the rules applicable in the member state in which that subsidiary has its registered office do not permit those losses to be deducted from the latter's profits, when the application of that legislation is combined with that of a convention preventing double taxation allowing, in the latter member state, the deduction from the income tax payable by the subsidiary of a sum corresponding to the income tax paid, in the member state on the territory of which that permanent establishment is situated, in respect of the latter's activity.

However, TFEU does preclude such legislation in the case where the effect of its application is to deprive that group of any effective possibility of deducting those losses from the group's overall profits, where it is not possible to set off those losses against that subsidiary's profits in the member state on the territory of which that subsidiary is established, these being matters for the referring court to verify.

### C-320/17: Input VAT deduction – 5 July

The Seventh Chamber of CJEU has [ruled](#) that in the VAT Directive, the letting of a building by a holding company to its subsidiary amounts to 'involvement in the management' of that subsidiary, which must be considered to be an economic activity. This gives rise to the right to deduct VAT on the expenditure incurred by the company for the purpose of acquiring shares in that subsidiary, where that supply of services is made on a continuing basis, is carried out for consideration and is taxed, meaning that the letting is not exempt, and there is a direct link between the service rendered by the supplier and the consideration received from the beneficiary.

Expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the subsidiaries' management by letting them a building and which, on that basis, carries out an economic activity has to be regarded as belonging to its general expenditure and the VAT paid on that expenditure must, in principle, be capable of being deducted in full.

Expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the management of only some of those subsidiaries and which, with regard to the others, does not, by contrast, carry out an economic activity must be regarded as only partially belonging to its general expenditure, so that the VAT paid on that expenditure may be deducted only in proportion to the expenditure which is inherent in the economic activity, in accordance with the apportionment criteria defined by the member states, which, when exercising that power, must have regard to the aims and broad logic of that directive and, on that basis, provide for

a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to economic and to non-economic activity, which it is for the national courts to ascertain.

## C-544/16: VAT in the context of 'credits' and auctions – 5 July

The Fifth Chamber of CJEU has [ruled](#) that:

- VAT Directive must be interpreted as meaning that the issue of 'credits' which allow an operator's clients to bid in the auctions that it organises, are a supply of services for consideration, for which the consideration is the amount paid in return for those 'credits'
- The value of 'credits' used in order to bid is not included in the consideration received by the taxable person in return for the supplies of goods that it makes for the benefit of users who won an auction organised by it, or users who purchased a product using the 'buy now' or 'earned discount' features
- When interpreting the relevant provisions of EU and national law, courts of a member state that find that the same transaction has been the object of a different tax treatment for the purposes of VAT in another member state have the power, or even — depending on whether there is a judicial remedy under national law against its decisions — an obligation, to refer a request for a preliminary ruling to the Court

## OECD

### Vanuatu joins multilateral convention on Administrative Assistance – 21 June

Vanuatu has [joined](#) the [Multilateral 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 scope 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.

### Multilateral Convention to strengthen tax treaties enters into force with additional countries joining – 27/29 June/ 1 July

Kazakhstan, Peru, the United Arab Emirates and [Estonia](#) have [signed](#) the BEPS [Multilateral Convention](#) on tax treaties. This brings the total number of signatories to 79 and the number of covered jurisdictions to 81.

The signatures come a few days before the Convention enters into force on 1 July 2018 for five of the jurisdictions that signed last year.

The Convention is the first multilateral treaty of its kind. It allows jurisdictions to integrate results from the OECD BEPS Project into their existing networks of bilateral tax treaties.

### Public comments received on the future revisions of Transfer Pricing Guidelines – 28 June

The OECD has published the stakeholder comments it received as part of its public consultations on the scope of the future revisions of [Chapter IV](#) (Administrative Approaches) and [Chapter VII](#) (Intra-group services) of the Transfer Pricing Guidelines.

## OECD launches largest source of comparable tax revenue data – 28 June

The OECD has published a new database providing detailed and comparable tax revenue information for 80 countries around the world – and which will expand to cover more than 90 countries by the end of 2018.

This new Global Revenue Statistics Database is produced in partnership with countries and regional organisations. The database provides country-specific indicators on tax levels and structures. The OECD hopes that it will strengthen the capacity of governments and tax policy-makers to develop and implement tax policy reforms that will raise domestic resources.

## OECD launches public consultation on transfer pricing aspects of financial transactions – 3 July

The OECD invites public comments to its [discussion draft](#) on financial transactions, which deals with follow-up work in relation to BEPS Actions 8-10 (aligning transfer pricing outcomes with value creation).

The 2015 report on BEPS Actions 8-10 mandated follow-up work on the transfer pricing aspects of financial transactions. Under that mandate, this discussion draft aims to clarify the application of the principles included in the 2017 edition of the OECD Transfer Pricing Guidelines. This relates, in particular, to the accurate delineation analysis to financial transactions. The work also addresses specific issues related to the pricing of financial transactions such as treasury function, intra-group loans, cash pooling, hedging, guarantees and captive insurance.

## OECD announces major enlargement of the global network for the automatic exchange of offshore account information as over 100 jurisdictions get ready for exchanges – 5 July

The OECD has published a new set of bilateral exchange relationships established under the Common Reporting Standard Multilateral Competent Authority Agreement (CRS MCAA).

In total, the international legal network for the automatic exchange of offshore financial account information under the CRS now covers over 90 jurisdictions, with the remaining dozen set to follow suit over summer. The network will allow over 100 committed jurisdictions to exchange CRS information in September 2018 under more than 3200 bilateral relationships that are now in place. This is an increase of over 500 since April of this year, the OECD says.

## State Aid

### Dutch Ministry of Finance publishes a summary of the pleas it made in front of the CJEU – 2 July

The Netherlands has made its case before the Court of Justice of the EU (CJEU), defending its tax treatment of Starbucks which the Commission identified as contrary to EU's state aid laws.

[Reportedly](#), the Dutch government appeared before the CJEU to argue that the Commission is wrong to impose its own interpretation of the arm's length principle on member states. Moreover, the Dutch further explained their reasoning for the arm's length treatment of Starbucks in the Netherlands, arguing that it used 20 independent coffee roasters as a reference point to its transfer pricing considerations.

The General Court is expected to deliver its final verdict on the case in a few months.

## Commission opens in-depth investigation into tax exemptions for companies in the Madeira Free Zone – 6 July

The European Commission has [opened](#) an in-depth investigation to examine whether Portugal has applied the Madeira Free Zone regional aid scheme in conformity with the 2007 and 2013 Commission decisions approving it.

In particular, the Commission has concerns that tax exemptions granted by Portugal to companies established in the Madeira Free Zone are not in line with the Commission decisions and EU State aid rules.

## **SPAIN NEEDS TO RECOVER AROUND €167 MILLION OF INCOMPATIBLE AID FROM POSTAL operator Correos – 10 July**

The European Commission has [found](#) that Correos, the publicly-owned Spanish postal operator, was overcompensated for the delivery of its universal postal service obligation between 2004 and 2010, and also benefited from incompatible tax exemptions. Spain now has to recover around EUR 167 million from Correos.

## Other News

### Technology Groups criticise EU Digital Tax proposals – 25 June

A coalition of businesses and tech groups have [expressed](#) to the European Commission their dissatisfaction with the Commission's digital tax proposals. They fear that the Commission proposals, especially the short-term measure introducing a so-called digital services tax (DST), would harm EU's competitiveness and risk leading to double-taxation. They call instead (and unsurprisingly) for the Commission and member states to advance multilateral work at the OECD-level, rather than proceeding with unilateral national or EU-level measures.

## **GREENS' GROUP PUBLISHES NEW REPORT ON AUSTRIA'S TAX PRACTICES AND FINANCIAL system – 2 July**

The European Parliament's Greens-EFA Group has published a new [report](#) looking into Austria's alleged facilitation of 'aggressive tax planning'.

The report argues that while Austria has made progress on issues of financial secrecy in recent years, the country remains an attractive destination for dirty money. Its publication coincided with the start of the Austrian Presidency of the Council, which has made the fight against tax avoidance one of its priorities.

### EU Auditors to examine VAT and customs duties in e-commerce – 5 July

The European Court of Auditors (ECA) is [conducting](#) an audit to find out how effectively the EU is addressing the challenges posed by e-commerce in terms of VAT and customs duties.

ECA will examine the European Commission's regulatory and control framework for e-commerce and cooperation between member states to ensure that VAT and customs duties on e-commerce transactions are collected in full.

## Corporate Europe Observatory publishes report on tax lobbying by Big Four - 10 July

The Brussels-based NGO Corporate Europe Observatory has published a new [report](#) claiming that the Big Four (B4) accountancy firms have harmful and too extensive influence on lobbying EU's tax policies.

The report argues, in particular, that the B4 are using certain associations and organisations as smoke-screen vehicles to help them lobby their causes and views. It calls for the access of B4 to EU tax policy making to be blocked, including barring them access to certain Commission expert groups and prohibiting them from receiving EU public contracts for tax-related studies and impact assessments.

### Events

- 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](#)