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Policy update

Tax Policy Update

9 – 20 July

HIGHLIGHTS

- European Parliament: ECON hearing with German Minister of Finance, MEPs question the country's stance on public CBCR – 12 July
- Council: member states yet again fail to agree on reverse charge mechanism and e-publications – 13 July
- Council: Austria pushes forward with ambitious agenda for digital services tax – 16 July

European Commission

Commission publishes consolidated VAT Directive with proposed definitive regime provisions – 12 July

The European Commission has published a new consolidated version of its VAT Directive, with all recently adopted legislative changes included in it. The 'catch' is that this version also includes the Commission's recently proposed technical amendments for a definitive VAT system.

For further details on the Commission's technical amendments on the definitive regime, please consult Accountancy Europe's Tax Policy Update from 25 May.

Commission publishes July infringements package – 19 July

The European Commission has published its latest monthly infringements package, in which it requires several member states to align their tax systems and specific tax rules with EU requirements.

For example, the Commission calls on Germany to align its administrative practice regarding cross-border VAT refund with EU law. Moreover, the Netherlands is required to stop taxing transfers of pension capital by mobile workers.

See here for the full July infringements package.

European Parliament

ECON adopts report on special VAT scheme for SMEs by wide margin – 11 July

The ECON Committee has adopted its draft report on the VAT special scheme for SMEs by a large margin: 44 votes in favour, 4 against and 4 abstentions.

The next step will be a vote in Plenary, currently scheduled for 11 September. Once passed in Plenary, the Commission proposal can then become EU law with unanimous agreement by EU member states.

As always with tax proposals, the European Parliament only submits its non-binding opinion. The Parliament's work on the file is led by **Tom Vandenkendelaere (EPP/BEL)**.

ECON holds **HEARING WITH AUSTRIAN FINANCE MINISTER ON THE PRESIDENCY'S** priorities, including tax – 11 July

The ECON Committee has held a hearing with the Austrian finance minister, **Hartwig Löger**, to discuss the Austrian Presidency's policy priorities in financial services, including tax. The hearing provided further insight into which tax files the Presidency intends to proceed on, and how.

In his opening remarks, the minister insisted that the Presidency will aim for more efficiency and fairness in taxation. This means avoiding harmful tax competition between member states and fighting tax avoidance and evasion, the minister elaborated.

Progress on digital tax and CCCTB, work closer together with the European Parliament

More specifically, the Commission's digital tax proposals will be high on the agenda. For this purpose, the Austrians will use the ECOFIN meeting in 7-8 September to further progress on these files. The Presidency will seek to advance both the short-term digital services tax (DST), as well as the long-term solution to devise a definition for a digital permanent establishment. On the latter in particular, the minister emphasised that they will work at the OECD-level. Moreover, he warned that the DST should not pose any obstacles for progress on digital permanent establishment.

CCCTB also remains a priority, the minister explained. Therefore, the Austrian Presidency will try to put together a broadly defined CCCTB to have an effective basis to work on further. The minister sees an opportunity to make further progress on this.

The minister also appears more willing than the previous Bulgarian Presidency to cooperate with the European Parliament on tax. **Ludek Niedermayer (EPP/CZE)** lamented that the Bulgarian Presidency had refused to attend hearings of the TAX3 Committee. In response, the minister highlighted the primacy of the ECON Committee on financial files, but promised to consider which tax topics could be discussed with the TAX3 Committee instead.

Draft report published on the extension of reverse charge mechanism published – 11 July

The European Parliament's draft report on the proposed extension of the reverse charge mechanism has been published. It has been prepared by the MEP **Sirpa Pietikäinen (EPP/FIN)**.

The draft report makes Ms. Pietikäinen's position clear: strong support for the Commission proposal with no amendments. As a next step, the ECON Committee and then Plenary will have to adopt the draft report. Although the actual decision is made unanimously by the member states, they will need the Parliament's non-binding opinion before the proposal can become EU-law.

For further details on the Commission's proposal, please see Accountancy Europe's Tax Policy Update from 8 June.

ECON hearing with German Minister of Finance, MEPs question the country's stance on public CBCR – 12 July

The ECON Committee has held a hearing with the new social-democratic finance minister of Germany, **Olaf Scholz**, to clarify his priorities and mandate.

Those of you hoping for a signal of change in the public CBCR deadlock thanks to a social-democratic finance minister in Germany will be bitterly disappointed.

Overall, the minister called for a "cautious approach" on public CBCR, stressing any solution would have to function in practice in order to be effective.

Challenged by the Green MEP **Ernest Urtasun (Greens-EFA/SPA)**, the minister insisted that public CBCR can only work if everyone – from companies to countries – is on board.

The minister also briefly addressed the financial transaction tax (FTT). Responding to questions from **Burkhard Balz (EPP/GER)**, **Wolf Klinz (ALDE/GER)** and **Barbara Kappel (ENF/AUT)**, the minister called for a realistic view on what can be collected under a FTT regime. Moreover, he highlighted that the Commission's original proposal cannot address all the issues at hand.

Council

Member states yet again fail to agree on reverse charge mechanism and e-publications – 13 July

In what appeared to be an unnecessary display, member states once again failed to reach an agreement on the reverse charge mechanism and e-publications proposals at the July ECOFIN between EU finance ministers.

Following a similar failure at the May ECOFIN, many observers wondered what was the point to bring the items back to the agenda so soon after.

Reportedly, the Czechs requested for the reverse charge mechanism alone to be added to the July ECOFIN's agenda. Belgium and Sweden, for their part, subsequently requested for the e-publications file to also be added on the agenda, given that the fates of these two proposals appears sealed.

Technical work on the e-publications proposal is practically finished, but on the reverse charge mechanism there remains potential scope for further progress, for example the introduction of additional guarantees.

Although expectations prior to the meeting were zero and, indeed, no agreement was again reached, it does appear that some hope remains for the future.

New momentum for October?

The Austrian Presidency has now added both files on the October ECOFIN's agenda. The Austrian Presidency claims to have taken note of certain changes in positions which may leave the door open for a possible agreement in October.

Apparently, France may be open for revising its opposition to the reverse charge proposal, conditional to certain further technical tweaks. As a reminder, France's opposition is largely related to its fears that a wide-encompassing general reverse charge mechanism might undermine the unity of EU's VAT system. And if France agrees to the reverse charge mechanism, Czech Republic will in turn lift its veto on the e-publications file.

Code of Conduct Group publishes all Guidance notes – 13 July

The Council's Code of Conduct Group on business taxation has published a revised version of all its guidance notes issued since 1998. The purpose of guidance notes is to help build on the results of the Group.

A number of such guidance notes were agreed by the Group and endorsed by the Council over the years. Their implementation by member states is regularly reviewed by the Group.

Austria pushes forward with ambitious agenda for digital services tax – 16 July

The Austrian Presidency remains fully committed to a political agreement on the digital services tax (DST) by the end of its term, as reported in earlier Tax Policy Updates.

In past weeks, the timeline has become increasingly clear. The Presidency intends to sound out latest positions amongst EU finance ministers at the 7-8 September ECOFIN. The Austrians are aiming for a possible political agreement as early as 6 November.

For the time being, there have been no significant changes to battle lines. France and Spain remain strongly in favour, whilst countries such as Ireland, Luxembourg and Sweden oppose. Germany's intentions, for its part, are ambiguous. On the one hand, it still appears more passive in the negotiations, in contrast to its previous strong support for the DST. On the other hand, Germany recently made a political commitment together with France to reach a political agreement on digital taxation by the end of 2018.

The key challenge for the Austrian Presidency will be to bridge these disagreements – not an easy task given that unanimity is required. The Commission and the Presidency might use a post-Brexit agreement with the UK as a bargaining chip to get Ireland in line. As for the other opponents of DST, it remains to be seen.

International

INDIA DEVELOPING "SIGNIFICANT ECONOMIC PRESENCE" TEST TO INCREASE TAXATION of multinational firms – 13 July

The Indian government is working on a new significant economic presence test, whose purpose is to expand India's taxation rights over the profits of digital and non-digital multinationals. To facilitate its work, the government launched a public consultation on 13 July to get feedback from stakeholders.

India has been at the forefront of recent digital taxation discussions in the OECD, and equally active in pushing through unilateral domestic legislation. For example, it was one of the first countries to introduce an equalization levy on cross-border digital advertising, a move followed by a GST on several imported cross-border online services.

New Spanish Prime Minister plans corporate tax overhaul – 17 July

Spain's new socialist prime minister, **Pedro Sanchez**, has announced his intention to push through major corporate tax reforms in the country.

At the forefront of the plans is to close loopholes in order to ensure that all companies – and especially the largest ones – pay a minimum 15% in effective taxes. Further measures are planned to fight against tax evasion, including a bill to ban tax amnesties.

OECD

Global Forum publishes tax transparency compliance ratings for seven jurisdictions and welcomes three new members – 16 July

The Global Forum on Transparency and Exchange of Information for Tax Purposes has published seven peer review reports assessing compliance with the international standard on tax transparency and exchange of information on request (EOIR).

These reports assess jurisdictions against the updated standard which incorporates beneficial ownership information of all legal entities and arrangements, in line with the definition used by the Financial Action Task Force (FATF) Recommendations.

Two jurisdictions – Guernsey and San Marino – received an overall rating of "Compliant". Four others – Indonesia, Japan, the Philippines and the US were rated "Largely Compliant". Kazakhstan was rated "Partially Compliant". According to the OECD, these jurisdictions have demonstrated their progress on many deficiencies identified in the first round of reviews. Main challenges in this second round are associated with ensuring the availability of beneficial ownership information, an element of the standard that was strengthened in 2016.

Platform for Collaboration on Tax invites comments on a revised report on the Taxation of Offshore Indirect Transfers of Assets – 16 July

The Platform for Collaboration on Tax – a joint initiative of the IMF, OECD, UN and World Bank Group – has opened a follow-up public consultation on its toolkit for the taxation of offshore indirect transfers. The deadline for comments is 24 September.

As a reminder, the Platform has undertaken the development of a series of "toolkit" reports to help guide developing countries in the implementation of various policy options on international taxation issues. One such issue identified by developing countries themselves is the taxation of offshore indirect transfers of assets.

There is currently no unifying principle by individual countries on how to treat these transactions. Instead, countries now follow very different approaches in their domestic law—and many treaties now in effect do not include the relevant model treaty provisions.

The Platform already sought public feedback on a previous draft of this report, which was posted for comments from late summer through October of 2017. The OECD states that this initial draft generated huge interest. Given the volume of comments received at that time, and some of the concerns raised, the Platform has spent considerable time digesting and responding to the comments in this new draft of the report, published with some new questions for consideration.

Other News

EESC publishes opinion on digital tax – 12 July

The European Economic and Social Committee (EESC) has published its opinion on the Commission's digital taxation proposals.

The highlights of the opinion include the following:

- The solution must ultimately be global, with proper global governance and global rules
- It is important to develop new principles on how to attribute corporate profits to an EU country and tax them, in dialogue with trading partners
- The Commission's impact assessment should be complemented by an analysis of what impact the short-term digital services tax (DST) will have on investments, start-ups, jobs and growth. It also needs to show how the proposal will affect SMEs
- DST does not tax corporate profits but instead turnover, which is different from the global corporate tax system based on the taxation of profits. However, EESC recognises that for digital companies that do not have a physical presence, the country of sales will not receive corporate profit taxes
- EESC is concerned that such a shift in taxation will benefit larger economies with many consumers at the expense of smaller exporting economies. Thus any solution, whether short or longer term, must result in a fair and equal economic outcome for all EU countries
- Notes that there is no sunset clause or other mechanism ensuring that DST is withdrawn when a longer-term solution is found. EESC strongly encourages the Council to develop such rules if the interim measure should be introduced
- Europe now needs to come to a common position on the DST, in the context of ongoing discussions at the OECD level

MEP Questions & Answers

Reform of the EU VAT regulations – 22 June

The European Commission has replied to a question asked by the MEP **Karol Karski (ECR/POL)** with regard to VAT reform in the EU.

In his question, Mr. Karski asks the Commission how the use of VAT fraud for financing crime and terrorism should be prevented, and whether it has conducted a country-by-country analysis of tax income losses due to VAT abuse.

In his reply, **Commissioner Moscovici** refers to the myriad of VAT proposals issued in past months and years, including initiatives to strengthen authorities in the fight against VAT fraud and improve member states' cooperation. In terms of financial losses, latest estimations show that around EUR 152 billion were lost in 2015 due to shortcomings in VAT collection, including fraud. Additionally, the losses due to cross-border fraud were estimated to be in the order of EUR 50 billion, the Commissioner explains.

Brexit — digital taxation – 25 June

The European Commission has replied to a question asked by the MEP **Barbara Kappel (ENF/AUS)** with regard to Brexit and digital taxation.

In her question, Ms. Kappel asks the Commission whether there is a risk that after Brexit, the UK will introduce a tax regime that is beneficial to "digital giants", and how the Commission will seek to prevent such a prospect.

In his reply, **Commissioner Moscovici** argues that once implemented, it will be impossible for digital companies operating in Europe to avoid the EU's tax rules even if they are resident in a third country. Moreover, the Commission hopes that ultimately an international agreement will be found on the matter.

Finally, the Commissioner stresses that the Commission is carefully considering all risks in the field of taxation after Brexit. The Guidelines adopted by the European Council on 23 March 2018 state in this regard that any free trade agreement to be concluded with the UK must ensure a level playing field to prevent any unfair competitive advantage that the UK could enjoy by undercutting protection with respect to, inter alia, competition and state aid, tax, social, environment and regulatory measures and practices.

Tax exemption for UEFA under German law – 5 July

The European Commission has replied to a question asked by the MEP **Jörg Meuthen (EFDD/GER)** with regard to tax exemptions granted to UEFA in Germany.

In his question, Mr. Meuthen argues that the German government plans to grant UEFA tax relief if Germany is allowed to host Euro 2024. Allegedly, the German government has stated that there is a public interest element behind the plans, as it relates to a major international event.

He asks the Commission whether the German government's alleged plans are aligned with EU state aid rules, and whether they are in breach of the Commission's anti-tax avoidance agenda.

In his reply, **Commissioner Moscovici** states that he is unaware of the exemption Mr. Meuthen refers to. He acknowledges that EU's state aid rules also relate to international sport competitions, but maintains that the case described by the MEP does not bear resemblance to the practice of granting tax rulings to multinationals.

Digital equalisation tax – 6 July

The European Commission has replied to a question asked by the MEP **Martin Schirdewan (GUE-NGL/GER)** with regard to the digital services tax (DST).

In his question, Mr. Schirdewan asks the Commission which undertakings specifically would fall under the Commission's proposed DST.

In his reply, **Commissioner Moscovici** acknowledges that whilst preparing the DST proposal, the Commission analysed specific companies with digital business models to improve its understanding of them. However, the Commission does not have any list of companies that would or would not be subject to the DST. The compilation of such list would require analysing on a case-by-case basis detailed company data to which the Commission does not have access, the Commissioner concludes.

VAT on sun cream – 13 July

The European Commission has replied to a question asked by the MEP **Brian Hayes (EPP/IRL)** with regard to VAT applicable to sun cream.

In his question, Mr. Hayes asks the Commission whether sun cream could be subject to a reduced VAT rate.

In his reply, **Commissioner Moscovici** states that under the VAT Directive as it currently exists, a member state would not be allowed to apply a reduced rate on sun cream as it does not fall under the category of pharmaceutical products. However, if the Commission's currently proposed VAT rates reform is adopted, member states would be free to apply reduced rates to a wider range of products, sun cream included.

Commission resources for combating financial crime – 16 July

The European Commission has replied to a question asked by the MEP Sven Giegold **(Greens-EFA/GER)** with regard to Commission's resources for combating financial crime.

In his question, Mr. Giegold asks the Commission whether its relevant Units are adequately resources in order to work on the fight against financial crime.

In her reply, **Commissioner Jourova** (justice) assures that the Commission's work in these areas are adequately bolstered by appropriate human and budgetary resources. For example, the Commission's task force in charge of 'financial crime' within DG JUST has become a separate new Unit within the DG. The Commission will ensure that this Unit is adequately equipped to deliver. This might involve the redeployment of internal resources if necessary.

Transfer pricing in EC law – 18 July

The European Commission has replied to a question asked by the MEP **Richard Sulík (ECR/SVK)** with regard to transfer pricing in EU law.

In his question, Mr. Sulik asks the Commission whether a member state could abolish national transfer pricing legislation, whether there is a generally binding EU-level regulation, document or other communication that requires or recommends the application of transfer pricing rules between dependents.

In his reply, **Commissioner Moscovici** states that EU law does not explicitly oblige member states to have transfer pricing legislation. However, member states have incorporated the arm's length principle into the EU Arbitration Convention and, when applying the mutual agreement and arbitration procedure, are bound by that principle. In the case of the recent tax ruling state aid cases, the main issue is unequal treatment between competitors.

Moreover, the Court of Justice of the EU (CJEU) recently held that the application of cross-border transfer pricing rules discriminates between companies forming part of a multinational group, and entities belonging to a domestic group. However, the CJEU stated that discrimination is justified in order to ensure a balanced allocation of taxing rights to prevent tax avoidance.

CJEU further held that it was disproportionate for a taxpayer subject to those rules not to be given the opportunity to demonstrate that the terms of its transactions are commercially justified and not motivated by tax avoidance. The reasoning in that judgment cannot be exported into the state aid discipline without careful consideration of the different focus of both sets of rules. In the context of Article 49 TFEU, the arm's length principle is seen foremost as an anti-avoidance measure, while in the context of Article 107(1) it is seen as means of ensuring that group companies and standalone companies are placed on equal footing under the ordinary corporate tax system, the Commissioner concludes.

Events

- 14/09/2018, ***Future of the Corporate Income Tax in the World: Is This the End of the CIT as We Know It?*** Estonian Ministry of Finance, Tallinn. Source N/A
- 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