ACCOUNTANCY EUROPE.

POLICY UPDATE

TAX POLICY UPDATE

9 – 20 JANUARY

Corrigendum: in the Tax Policy Update of 23 December, it was reported that ICAEW had published a survey of tax compliance professionals in cooperation with the European Contact Group (ECG). However, the cooperating organisation in question was the European Group of International Accountancy Networks and Associations (EGIAN), and not ECG.

HIGHLIGHTS

- European Parliament: Working Document of the PANA Committee published – 12 January
- European Parliament: briefing paper on public CBCR published – 16 January
- International: Theresa May threatens to turn UK into a low-tax jurisdiction – 17 January
- Several items on prospective tax reforms under the Presidency of Donald Trump

EUROPEAN COMMISSION

EU REPORT CALLS FOR MORE UNION FUNDING TO DERIVE FROM RAISING OWN TAXES – 12 JANUARY

A report drafted by the European Commission's **High-Level Group on own resources** (so-called Monti Group) calls for a greater share of EU's funding to come from raising own taxes. The proposed tax options include a EU-level **corporate tax** combined with a **Common Consolidated Corporate Tax Base (CCCTB)**, a levy on motor fuel, a EU VAT and a **Financial Transaction Tax (FTT)**. The recommendations of the report are politically difficult to implement, not only due to the prevailing Eurosceptic climate but also because Member States have historically been reluctant to delegate further competencies in the area of taxation to the EU-level. The Group was established in 2014 to reflect on finding "more transparent, simple, fair and democratically accountable" ways to finance the EU. It is composed of Members designated by the European Parliament, the Council and the European Commission – including **Commissioner Moscovici**.

EUROPEAN PARLIAMENT

GREENS-EFA GROUP: MALTA IS A TAX HAVEN – 11 JANUARY

The **Greens-EFA Group** of the European Parliament has published a report arguing that **Malta** should be considered a "**tax haven**" due to the low effective **corporate tax rate** that certain companies are subject to in the country. The report maintains that between 2012 and 2015, other Member States may have lost as much as €14 billion due to the Maltese tax system. The report, therefore, calls into question the credibility of the **Maltese Presidency** to lead the EU's work on anti-tax avoidance in the next six months (for further details on the Presidency's plans for its term, see article below). The Maltese Finance Minister, **Edward Scicluna** has criticised the report for making "unprofessional" and "very unfair" conclusions about Malta's tax system.

WORKING DOCUMENT OF THE PANA COMMITTEE PUBLISHED – 12 JANUARY

PANA Committee of the European Parliament has published a **working document** which outlines the planned approach for the PANA Committee's work and the final report itself. The two leading MEPs ('co-rapporteurs') on the dossier are **Jeppe Kofod (S&D/DEN)** and **Petr Jezek (ALDE/CZE)**. The document highlights the key issues, activities, actors and practices that the rapporteurs feel require particular attention – including the role of the accountancy profession. Of particular interest, the document establishes that:

- In the co-rapporteurs' view, secrecy and the **lack of transparency** are the core causes for the offshore structures and practices as revealed by the Panama Papers
- The main focus of the Committee's work will be on assessing potential failures of **enforcement**
- The rapporteurs have taken note of the various **Codes of Donduct** that professions (financial institutions, lawyers and accountants) use for self-regulation. The rapporteurs will look into such Codes and assess their effectiveness

In terms of **next steps**, a hearing of the PANA Committee will take place on **24 January** to discuss the role of **intermediaries** in establishing offshore structures and accounts. The Committee report is scheduled to be published on **6 March**.

EUROPEAN PARLIAMENT BRIEFING PAPER: PUBLIC COUNTRY-BY-COUNTRY REPORTING BY MULTINATIONAL ENTERPRISES – 16 JANUARY

The European Parliament has published a **briefing paper** on **public Country by Country Reporting (CBCR)**, which provides an overview of the international, EU and national legal frameworks concerning CBCR, on key positions by institutions and stakeholders, and next steps for the Commission proposal for public CBCR in the framework of amendments to the Accounting Directive. Of particular interest, the briefing paper confirms that the JURI Committee (legal affairs) will take a lead on the dossier on the European Parliament's side, whilst ECON will only provide its opinion. JURI and ECON Committees had a disagreement last year on which of the two should take the lead, but it is possible that the Council Legal Service opinion judging public CBCR to be a tax dossier (and, as such, subject to unanimity decision-making between Member States and only a consultative role for the European Parliament) encouraged the two Committees to find an agreement swiftly. The MEP **Evelyn Regner (S&D/AUT)** will lead the work, and is expected to publish her draft report on public CBCR on 1 February. As a side note, the briefing paper

makes reference to **Accountancy Europe's public CBCR** template as a source for an overview of various CBCR regimes across the globe.

JURI COMMITTEE CHAIR SUBMITS LETTER ON PUBLIC CBCR TO ECON CHAIR – 17 JANUARY

The Chair of the JURI Committee (legal affairs), **Pavel Svoboda (EPP/CZE)** has submitted a letter to the Chair of the ECON Committee, **Roberto Gualtieri (S&D/ITA)** on the Commission proposal for **public Country by Country Reporting (CBCR)**. The letter provides legal arguments for why company reporting, rather than taxation, constitutes the appropriate **legal basis** for the proposal. As a reminder, the Council Legal Service concluded last year that **Accounting Directive** is not the appropriate instance for public CBCR since it is a taxation issue and should, consequently, be subject to unanimity decision-making between Member States. This would also mean that the European Parliament would only have a consultative role on the dossier, instead of the current proposal in which the European Parliament has an equal say to that of Member States.

PLENARY HEARING ON FTT – 18 JANUARY

The European Parliament has held a Plenary hearing during which MEPs were updated on progress of the **Financial Transactions Tax (FTT)** negotiations between the 10 participating Member States. During the hearing, significant differences of opinion between MEPs emerged – largely on country, rather than ideological lines. MEPs from Member States not involved in the negotiations expressed the need for any prospective FTT not to affect non-participating countries, and urged for the voice of the non-participants to be heard as well. The European Parliament as such will not have any involvement on the dossier, however. In terms of **next steps**, the Finance Ministers of the 10 participating Member States will discuss FTT next week. On the menu, mainly to discuss a possible exemption for pension funds.

COUNCIL

"DOCUMENTS SHOW GERMAN OPPOSITION TO MAKING TAX RULINGS PUBLIC" – 6 JANUARY

According to Politico (article only available to Politico Pro subscribers), **Germany** played a prominent role in preventing public access to information on **tax rulings** granted by Member States to businesses, arguing that this would go against the country's national secrecy laws. This took place in the framework of negotiations on the Commission proposal on automatic exchange of tax rulings information between Member States' tax authorities. The proposal entered into force in early January (for further details, please see Accountancy Europe's Tax Policy update from 6 January).

PROGRAMME OF THE MALTESE PRESIDENCY – 9 JANUARY

The **Maltese Presidency** has published a more detailed Work Programme outlining its priorities for the next six months to come. With regard to **taxation**, the Presidency commits itself mainly to carry on work on existing key dossiers, including the VAT and e-commerce package as well as the proposals on a **Common Consolidated Corporate Tax Base (CCCTB)**, amendments to the Anti-Tax Avoidance Directive (ATAD) in order to provide for hybrids with third countries, and the proposal to reform the EU tax dispute resolution system.

UK HOUSE OF COMMONS' REASONED OPINION(S) ON THE PROPOSALS FOR A CCTB AND CCCTB WAS/WERE SUBMITTED LATE – 12 JANUARY

The **UK House of Commons** has submitted its reasoned opinion on the Commission proposal to re-launch the **Common Consolidated Corporate Tax Base (CCCTB)**. The House concludes that the Commission does not fulfil the principles of **subsidiarity** and proportionality, and provides reasoning for its conclusions. Readers may recall that national parliaments from six other Member States also submitted similar opinions on the Commission proposal (for further details, please see Accountancy Europe Tax Policy Update from 6 January). The British reasoned opinion, however, was submitted too late after the Commission deadline.

COURT OF JUSTICE OF THE EU – RULINGS

RULING ON THE TAXATION OF ENERGY PRODUCTS AND ELECTRICITY – 18 JANUARY

The Ninth Chamber of the Court of Justice of the EU (CJEU) has issued a ruling on the taxation of **energy products** and **electricity**. The case code is C-189/15. In its ruling, the Court establishes that the concept of "**tax reductions**" as established in the Directive on the taxation of energy products and electricity (2003/96/EC) also covers the incentives granted to energy-intensive businesses in respect of amounts covering general electricity charges. Moreover, tax reductions may be granted on the consumption of electricity in favour of energy-intensive businesses within the manufacturing sector alone.

RULING ON THE APPLICATION OF THE PROFIT MARGIN SCHEME ON SECOND-HAND GOODS – 18 JANUARY

The Third Chamber of the Court of Justice of the EU (CJEU) has issued a ruling on special **profit margin schemes** and their application to second-hand goods. The case code is C-471/15. In its ruling, the Court establishes that according to the **VAT Directive**, used parts from end-of-life motor vehicles purchased by a vehicle reuse undertaking from a private individual that are intended to be sold as spare parts, constitute 'second-hand goods' within the meaning of that provision. This means that the supplies of such parts, effected by a taxable dealer, are subject to the application of the profit margin scheme.

INTERNATIONAL

"TRUMP TAX CUTS COULD JUMP-START GLOBAL ECONOMY, WORLD BANK SAYS" – 10 JANUARY

As reported notably by Bloomberg, **World Bank** has assessed that the Trump Administration's plans to cut the **US corporate tax rate** and increase infrastructure spending could provide a much-needed boost both for the US as well as global economies. Any such benefits might, however, be hampered by protectionist measures and prospective trade wars. The impact of **Brexit** also remains a point of concern and uncertainty.

"PLANS FOR AUSTRALIA TO ADOPT A 'GOOGLE TAX' WELCOMED BY ADVOCACY GROUP" – 16 JANUARY

According to the Guardian, **Australia** is planning to adopt a so-called "**Google tax**" – a move welcomed by the civil society organisation **Tax Justice Network (TJN)**. The scheme is, effectively, a **diverted profits tax** which according to TJN could increase Australia's tax yield by "billions". It would introduce a 40% penalty on profits artificially diverted outside of the country by multinationals. The scheme is designed to target, in particular, entities with an annual global income of $1 billion. The tax will be applicable from income years beginning on or after 1 July 2017.

THERESA MAY THREATENS TO TURN UK INTO A LOW-TAX JURISDICTION – 17 JANUARY

The British Prime Minister **Theresa May** has threatened to turn the **UK** into a **low tax jurisdiction** in order to remain competitive if it is closed out of Single Market access in the **Brexit** negotiations. The Prime Minister announced in her speech that although the UK will be leaving the Single Market, it hopes for an extensive Free Trade Agreement

that would provide some level of access. This was already announced by Chancellor **Philip Hammond** in an interview to the German newspaper Die Welt few days prior. **Jeroen Dijsselbloem** – the Finance Minister of the **Netherlands** – has referred to British tax rhetoric as "very damaging". The Dutch Deputy Prime Minister **Lodewijk Asscher** has, moreover, stated that the Netherlands would block any Brexit deal that does not include strong **anti-tax avoidance** measures aimed at preventing the UK from turning itself into a 'tax haven'. Germany's **Angela Merkel**, for her part, recently called for a joint EU approach to **corporate taxation** in wake of the Brexit and UK plans to cut corporate tax rates.

OECD

KAZAKHSTAN, CÔTE D'IVOIRE AND BERMUDA JOIN THE INCLUSIVE FRAMEWORK ON BEPS – 6 JANUARY

Kazakstan, **Ivory Coast** and **Bermuda** have joined the **BEPS Inclusive Framework** whose purpose is to provide a forum for a wider range of countries to provide feedback and exchange views on the BEPS recommendations and their implementation. These three new additions bring the total number of countries in the Framework to 94.

STATE AID

"APPLE'S BILL TO IRELAND COULD RISE TO €1.6BN" – 18 JANUARY

As reported notably by EU Observer, **Apple** could be liable to pay an additional €1,6 billion in tax revenue to **Ireland** due to lost interest. This would come on top of the €13 billion that the European Commission ordered the company to pay to Ireland at the end of last year due to suspected breaches in EU state aid rules. Both Ireland and Apple have appealed the Commission's decision.

OTHER NEWS

REPORT CALLS FOR A TAX SHIFT FROM LABOUR TO ENVIRONMENT – 15 DECEMBER

A report drafted jointly by the Big Four, Trucost, Ex'Tax and Cambridge Econometrix is calling for a **tax shift** away from labour to natural resources – a move that would align tax systems with **Europe 2020 Strategy's** goals as well as the **Sustainable Development Goals (SDGs).** The study assesses the impacts of such a shift for the period of 2016-2020 in 27 EU Member States. The results demonstrate positive results in terms of GDP and employment in all 27 countries. By 2020, this could result in an average 2% boost to GDP and 2,9% increase to employment.

"TAX AVOIDANCE CRACKDOWN SEES 80% JUMP IN ADDITIONAL HMRC REVENUE" – 6 JANUARY

According to Accountancy Age, the **UK HMRC** has seen an 80% increase in tax revenue since it took additional measures to tackle tax avoidance and evasion in the past few years. One of the measures includes a scheme whereby a reward is granted to individuals that inform the authority on tax evaders.

"US TAX REFORM IS VITAL BUT DONALD TRUMP'S PLAN IS FLAWED" – 8 JANUARY

Lawrence Summers has written an opinion piece to the Financial Times (only available to subscribers) in which he acknowledges in principle the need for **tax reform** in the **US** but criticises the prospective plans of the Trump Presidency and the Republicans in Congress. More specifically, Mr. Summers argues that the planned **corporate cash flow tax** as well as a boost for export sector businesses has severe flaws – including increasing inequalities, being punitive for certain sectors such and risks being seen globally as a protectionist measure. He argues, instead, for a reduction in the corporate tax rate and fighting against "tax havens".

TRANSPARENCY INTERNATIONAL TO EU COUNCIL: STOP WATERING DOWN TAX TRANSPARENCY PROPOSALS – 6 JANUARY

The civil society organisation **Transparency International (TI)** has criticised EU Member States for "watering down" the European Commission's proposal for introducing **public Country by Country Reporting (CBCR)** in the EU. TI refers, specifically, to the last compromise text issued by the Slovak Presidency in December, which includes significant alleviations to the initial Commission proposal, such as what appears to be a 'comply or explain' approach for subsidiaries of multinationals whose parent companies are located outside of the EU, as well as the right for companies to withhold some information if it is deemed to risk exposing the company's business strategies. Moreover, recently the Legal Service of the Council declared that the legal basis of the proposal should be based on taxation (and, by extension, unanimity decision-making in the Council), rather than company reporting.

EESC OPINION: ANTI-TAX AVOIDANCE PRACTICES REGARDING HYBRID MISMATCHES – 12 JANUARY

The **European Economic and Social Committee (EESC)** has published its opinion on the European Commission's proposal to amend the **Anti-Tax Avoidance Directive (ATAD)** in order to introduce measures covering **hybrid mismatch** situations that involve non-EU jurisdictions. The opinion, in particular, maintains that the amendments to ATAD will significantly increase corporate tax yields in Member States, calls for similar rules to be adopted in third countries as well, urges Member States to assess the actual causes of hybrid mismatches and close potential loopholes – instead of merely seeking to increase tax revenue, and for Member States to consider **sanctions** against

taxpayers who benefit from such hybrid arrangements. The EESC opinion is **non-binding** and will have no direct impact on the content of the ATAD amendment, which will have to be approved by **unanimity** in the Council.

"FRANCE MUST CUT CORPORATION TAX TO COMPETE WITHIN EU, SAY AUDITORS" – 13 JANUARY

According to Euractiv, the **French Court of Auditors** has called on the French Government to cut the country's **corporate tax rate** in order to boost the competitiveness of French businesses in the EU. More specifically, the Court recommends for the rate to be reduced from the current 33,3% to 25%. The Government has already promised to cut the rate to 28% by 2020, but the Court deems this to be insufficient.

GUARDIAN'S JASON HICKEL: TAX EVASION BY MULTINATIONALS UNDERMINES DEVELOPMENT AID EFFORTS – 14 JANUARY

Jason Hickel has written an article for the Guardian in which he argues that developing countries are, in fact, "developing" the wealthier ones through money flows from the former to the latter. This is, in part, due to interest payments on debt but mainly the result of unrecorded capital flights amounting to $13,4 trillion since 1980. These capital flows consist, Mr. Hickel argues, largely from illicit money flows from developing countries to "**tax havens**" through what he refers to as "trade misinvoicing" – a process similar to **transfer pricing** fraud – and the purpose of which is to evade taxes, launder money or avoid capital controls. These capital flows are superior to development aid by developed countries, and as such significantly contribute to undermining development aid efforts, according to Mr. Hickel.

"CONFUSED ATTEMPT TO FIX US CORPORATE TAXATION" – 15 JANUARY

Financial Times has published an opinion piece (only available to subscribers) on the expected **US tax reforms** to be undertaken by the Republicans, who now control both the Presidency as well as the Congress. The article provides an overview of some of the anticipated reforms, including ending the **deductibility of interest** and costs of imported inputs, cutting the **corporate tax rate** to 15-20% from the current 35%, and introducing a myriad of other simplification measures to make the tax system more streamlined. The article, however, is critical of the potential impacts of these reforms – to be introduced through a large tax reform package – and instead calls for targeted changes that could lead to better results and less disruptive unintended consequences.

"PREPARE FOR DONALD TRUMP'S CORPORATE TAX REVOLUTION" – 18 JANUARY

In his Financial Times article (only available to subscribers), **Chris Gyles** argues that the **global tax system** is in need of major reforms, and only a shock factor – such as the upcoming Trump Presidency – can create an opportunity for major reform. He proposes, in particular, to move towards a **destination-based** corporate tax system, whereby corporate taxes are levied in the country where the sales take place. Such a system, if adopted globally, could incentivise surplus countries such as **Germany**, **Japan** and **China** to rebalance their economies in favour of deficit countries.

OXFAM'S WINNIE BYANYIMA: GLOBAL FIGHT AGAINST TAX AVOIDANCE IS FAILING – 19 JANUARY

According to the Guardian, the Executive Director of **Oxfam**, **Winnie Byanyima**, has criticized failing efforts to tackle international **tax avoidance** at the **World Economic Forum (WEF)** that took place on the third week of January in Davos, Switzerland. She laments that leading economies are competing on **corporate tax rates** in a "race to the bottom", with clear reference to plans by the upcoming US President **Donald Trump** to cut the US rate and the British Prime Minister **Theresa May's** threats of turning the UK into a low-tax jurisdiction (see article above). Ms.

Byanyima calls for businesses to consider taxation as a moral question as it contributes to funding crucial public services in the developing world.

MEP QUESTIONS & ANSWERS

A SINGLE CORPORATE TAX SYSTEM AND A EUROPEAN TOBIN TAX – 6 JANUARY

The European Commission has replied to a question asked by the MEP **Stelios Kouloglou (GUE-NGL/GRE)** with regard to a single EU **corporate tax system** and a European **Tobin tax**. In his question, Mr. Kouloglou asks the Commission what it is planning to do in order to create a single EU tax system, what are its view on a European Tobin tax, and whether it would consider the establishment of such a tax. In his reply, **Commissioner Moscovici** refers to the **Common Consolidated Corporate Tax Base (CCCTB)** as an initiative that the Commission has undertaken in order to create a more coherent EU tax system. Moreover, the Commissioner refers to the ongoing work on the **Financial Transaction Tax (FTT)** – including a tax on financial intermediaries – conducted by Member States.

LIST OF TAX HAVENS – 13 JANUARY

The European Commission has replied to a question asked by the MEP **Miguel Viegas (GUE-NGL/POR)** with regard to the list of "**tax havens**". In his question, Mr. Viegas asks the Commission to provide a list of all 81 countries suspected of being 'non-cooperative' by the Commission (i.e. the so-called scoreboard of indicators), and to specify what transparency criteria were used as a basis. He is referring to the ongoing screening process as part of the EU's External Strategy on taxation to draw up a common Union list of non-cooperative jurisdictions. In his reply, **Commissioner Moscovici** refers to progress achieved so far in the work to establish the common EU list. The process is based on three criteria: (1) tax transparency, (2) fair taxation and (3) the commitment to the OECD BEPS standards. The tax transparency standards will, at the first stage, reflect broadly the OECD's criteria for drawing up its own list of non-cooperative jurisdictions, but from 2019 onwards additional transparency criteria will be applied. On fair taxation, two criteria are used: (1) whether the jurisdiction operates any preferential tax regimes that could be regarded as harmful according to the **Code of Conduct on Business Taxation**, and (2) whether the jurisdiction facilitates offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction. Finally, the Commissioner clarifies that the scoreboard of indicators – and the 81 jurisdictions listed in it – does not in any way reflect the final list of non-cooperative jurisdictions, and only constitutes a starting point for work in this area.

CONCERNS RAISED IN RECENT YEARS BY PUBLIC AND PRIVATE ORGANISATIONS ABOUT THE APPLICATION OF VAT IN THE MEDICAL AREA OF TISSUES AND CELLS – 16 JANUARY

The European Commission has replied to a question asked by the MEP **Ramon Tremosa i Balcells (ALDE/SPA)** with regard to the **VAT Directive** in the **medical area** of tissues and cells. In his question, Mr. Tremosa i Balcells states that whilst transactions involving the supply of human organs, blood and milk are subject to a VAT exemption, therapies related to tissues and cells remain subject to VAT. He also points out that in **Switzerland** for example the VAT system is favourable for the retention of private investment and innovation in the tissues and cell sector, and this constitutes a competitive disadvantage to companies with operations on the EU territory. He therefore asks the Commission whether it will address the issue by, for example, extending the VAT exemption to tissues and cells. In his reply, **Commissioner Moscovici** maintains that tissues and cells are subject to a VAT exemption if they are covered, notably, by the term 'human organ' and if it is part of medical care, including therapies related to tissues and cells. The Commission is, however, aware that there are different interpretations of the VAT Directive across the EU on this particular question. The Commission will, as part of the **VAT Action Plan**, reform the EU VAT rates

regime and give more powers to Member States, which may have a requested impact on the VAT treatment of tissues and cells as well.

NUMBER OF VAT FRAUD CASES – 16 JANUARY

The European Commission has replied to a question asked by the MEP **Julia Pitera (EPP/AUT)** with regard to the number of **VAT fraud** cases. In her question, Ms. Pitera asks the Commission how many intra-Community VAT fraud cases amounting to 10 million, 1 million and 10,000 have been identified in the past 10 years. In his reply, **Commissioner Moscovici** states that the Commission is not in a position to provide the requested information as Member States do not systematically report suspicious VAT fraud cases either to the Commission or the **European Anti-Fraud Office (OLAF)**, nor does the Commission have access to the information exchanged via the **Eurofisc network** or in the VAT **Information System Exchange (IMS)**. The Commission, however, estimates that intra-Community VAT fraud causes an annual loss of about €50 billion for Member States.

EVENTS

- Rescheduled, ***Playbook Breakfast with Commissioner Vestager***, Politico, Brussels. Source
- 24/01/2017, ***Taxation***, Financial Future, Brussels. Source
- 25/01/2017, ***Corporate Tax Reform: Is the CCCTB a Comprehensive Answer to Tax Challenges in our Globalised Economy?***, ZEW, Brussels. Source
- 01/02/2017, **State aid and tax rulings**, Bruegel, Brussels. Source
- 1/02/2017, ***Modernising tax policies in the EU Single Market***, EPC, Accountancy Europe, Brussels. Source
- 30/05/2017, ***Tax Day 2017***, Accountancy Europe, Brussels. Source