ACCOUNTANCY EUROPE.

POLICY UPDATE

# TAX POLICY UPDATE

23 JANUARY – 3 FEBRUARY

## HIGHLIGHTS

- European Parliament: first PANA Committee hearing with intermediaries – 24 January
- Council: FTT discussions postponed again, its future uncertain – 26 January
- OECD: OECD criticises French patent box system – 24 January
- Council: Member States advance with EU list of "tax havens", U.S. to be screened – 1 February

## EUROPEAN COMMISSION

### "COMMISSION FEELS THE IRISH HEAT ON CCCTB" – 24 JANUARY

According to Politico (article only available to Politico Pro subscribers), **Irish MPs** criticised heavily the Commission proposals for a **Common Consolidated Corporate Tax Base (CCCTB)** during a parliamentary hearing with **Commissioner Moscovici**. The Commissioner insisted during the hearing that the measure would not pose a threat to **national sovereignty**, but some Irish MPs maintained that the Commission is not listening to Ireland and called on the Commission to focus on "more important" matters. As a reminder, the two CCCTB proposals will have to be approved by **unanimity** in the Council.

### COMMISSION PUBLISHES ROADMAP ON WHISTLEBLOWER PROTECTION – 26 JANUARY

The European Commission has published a roadmap for "Horizontal or further sectorial EU action on **whistleblower protection**". A roadmap sets out the Commission's thinking and intentions on a certain issue. The Commission intends to organise **stakeholder consultations** in the coming months and propose an initiative by the end of the year. The Commission is considering **three options**, namely (1) legislative action (horizontal or sectorial), (2) non-legislative action, as well as (3) a combination of the two. Finding the appropriate legal basis will be one of the main challenges for adopting a legal act. In terms of **next steps**, the Commission will publish as a first step an **impact assessment** in the coming months which will include collecting input in a targeted manner from the most relevant stakeholders, including main legal professionals and business. A **public consultation** is expected for the first half of 2017, followed by a possible legislative (or non-legislative) proposal on the fourth quarter of the year.

# EUROPEAN PARLIAMENT

## GREENS-EFA GROUP PUBLISHES REPORT ON THE ROLE OF INTERMEDIARIES – 23 JANUARY

The **Green-EFA Group** of the European Parliament has published a report on **intermediaries** involved in enabling offshore structures, accounts, tax avoidance and evasion, and money laundering as revealed by Panama Papers. The report is based on the database maintained by the **International Consortium of Investigative Journalists (ICIJ)**, and provides data on the allocation of intermediaries by regions, as well as the amount of offshore structures established by different companies and banks. The report's purpose is to feed into PANA Committee's discussions on the topic, and to harness **public pressure** on the European Commission and Member States to take relevant action. In terms of **recommendations**, the report calls on Member States to apply stronger EU-level sanctions against intermediaries providing assistance to any individual or entity (regardless of geographical location) involved in money laundering, tax evasion or aggressive tax planning. Moreover, the European Commission should present a legislative proposal with concrete measures to **disincentive** advisors and intermediaries from providing "potentially aggressive tax planning schemes".

## PANA HEARING WITH INTERMEDIARIES – 24 JANUARY

On 24 January, the first hearing with **intermediaries** took place at the PANA Committee. The hearing brought together representatives from civil society, **banks**, **lawyers** as well as **PwC.** They discussed with MEPs the role of professions and the Big 4 in facilitating tax avoidance and evasion, money laundering and the setting up of dubious offshore structures and accounts.

The **accountancy profession** was consistently **criticised** – together with lawyers and bankers – for the suspected role that some of its members have played in enabling practices revealed by the Panama Papers scandal. Setting up a EU framework modelled along the lines of the **US Foreign Account Tax Compliance Act (FATCA)** was mentioned several times – by both the speakers and MEPs – as a prospective, albeit politically ambitious, solution. The debate also focused on **professional Codes of Conduct** and the ways in which these have been enforced. Many MEPs expressed scepticism on their effectiveness. The discussion on legal versus illegal practices – especially in the context of tax avoidance and evasion – also emerged. Most commentators agreed that simply sticking to the letter of the law is insufficient.

MEPs were interested in how intermediaries could be **dis-incentivised** from advising their clients on unethical or illicit activities – including the possibility of revoking business licenses. The possibility of **positive incentives** was also considered. Finally, several MEPs inquired about potential **conflicts of interest** stemming from large accountancy firms servicing both public and private sector clients.

## ECON, JURI COMMITTEE HEARINGS WITH THE MALTESE PRESIDENCY – 25 JANUARY

The Minister of Finance of **Malta**, **Edward Scicluna**, has attended a public hearing of the ECON Committee of the European Parliament. As anticipated, the Minister came under fire from the MEPs for Malta's **tax regime** which several civil society organisations argue is characterised by unfair advantages for multinationals. The Minister insisted that the country's tax system is fully compliant with all relevant rules and international obligations. The

Greens-EFA Group accused the country for being a “**tax haven**”. Moreover, the Maltese Minister for Economy, Investment and Small Business Minister, **Christian Cardona**, attended a hearing of the JURI Committee (legal affairs) in which the MEPs enquired whether the Maltese Presidency will push for progress on the work on **public Country by Country Reporting (CBCR)**. The Minister confirmed that the Presidency will do its best to achieve progress on “all files” currently on the table.

### GREENS-EFA MEPS CRITICISE COMMISSION AND MEMBER STATES FOR LACK OF COOPERATION ON PANAMA PAPERS – 2 FEBRUARY

Three Greens-EFA MEPs – **Sven Giegold (GER)**, **Molly Scott Cato (UK)** and **Eva Joly (France)** – have criticised the European Commission as well as Member States for their weak cooperation with the European Parliament’s PANA Committee. The criticism relates, in particular, to access to confidential documents such as minutes of the meetings of the Code of Conduct Group on Business Taxation. The same issue also emerged in the **TAXE I** and **II Committees**, as MEPs were seeking to discover for example which Member States have been responsible for blocking tax cooperation work of the EU. The MEPs are unhappy, moreover, about the refusal of Maltese Ministers to attend hearings of the Committee.

### EUROPEAN PARLIAMENT REPORT ON PUBLIC CBCR – 1 FEBRUARY

The European Parliament is about to publish its draft report on **public Country by Country Reporting (CBCR)**. The work in the Parliament will be led jointly by the MEPs **Evelyn Regner (S&D/AUT)** and **Hugues Bayet (S&D/BEL)** – from JURI (legal affairs) and ECON Committees, respectively. The two committees will work on the dossier jointly. The draft report will introduce notably the following main changes to the original Commission proposal:

- **Threshold:** annual turnover of €40 million – as opposed to the Commission’s proposed €750 million
- **Scope:** to cover the whole world – as opposed to the Commission proposal to only cover EU Member States and non-cooperative jurisdictions on a CBC basis, and consolidated figures for the rest of the world
- **Disclosure requirements:** on top of the disclosures that the Commission is proposing, the draft report calls on companies to also disclose subsidies received and the number of employees working on a full-time equivalent basis
- **Platform of publication:** the CBC reports should be published on a public register maintained by the European Commission – in the Commission proposal, the reports are required to be published on the subsidiary’s website for a period of 5 years

On the Council’s side, a total of 12 Member States have called for the legal basis of the proposal to be moved from corporate reporting to tax. However, an unanimity of all Member States is required in order for the Commission to withdraw the proposal. Member States will reconvene on **29 March** to agree on their approach.

## COUNCIL

### FTT DISCUSSIONS POSTPONED AGAIN, ITS FUTURE UNCERTAIN – 26 JANUARY

The Finance Ministers of the 10 EU Member States cooperating on the **Financial Transaction Tax (FTT)** have postponed their meeting – initially scheduled for 26 January – as the Minister from **Austria** was unable to attend due to the inauguration of the country’s new President. This was, at least, the official reason. The Ministers are planning to re-convene on the topic on 20 February. One of the main remaining points of contention is the proposal to give **pension funds** an exemption on the tax, as requested by **Belgium** and **Slovakia**. The possibility of extending the exemption to the insurance sector is on the table as well. Overall, a lot of scepticism reigns over whether sufficient political will remains amongst the negotiating countries to conclude the file. In **Germany**, some policy-makers are concerned that a FTT would make it more difficult for the country to attract the financial services activities that are expected to re-locate from the UK to the continent following Brexit. Some analysts speculate that the reason the proposal is still alive at all is either because current coalition government agreements prevent a resignation from the initiative (e.g. in Germany, the Social-Democrats support the tax), or due to upcoming elections for example in France and Germany.

## EU FINANCE MINISTERS UNHAPPY WITH COMMISSION'S REVERSE CHARGE PROPOSAL – 27 JANUARY

As reported notably by Politico (article only available to Politico Pro subscribers), several EU Finance Ministers have criticised the Commission's proposal for a VAT derogation for the application of a **generalised reverse charge mechanism**. Austria, Czech Republic, Slovakia and Hungary – supported by Germany – are unhappy with the **strict criteria** proposed by the Commission (for further details on the original proposal, please see Accountancy Europe's Tax Policy Update from 23 December). The criteria would exclude Austria, for example, from applying for the reverse charge derogation. Austria has been one of the two countries, on top of Czech Republic, most vocally calling for the Commission to allow for such a derogation. Moreover, Czech Republic is criticising the "safeguard clause" in the proposal allowing for the Commission to put an end to the reverse charge mechanisms should these prove problematic for the functioning of the Single Market. Other Member States such as Slovenia and Spain, for their part, criticised the derogation itself out of fear that VAT fraud would simply move to other countries, of potential administrative burdens and of the ensuing co-existence of two different VAT systems in the EU.

## MEMBER STATES ADVANCE WITH EU LIST OF "TAX HAVENS", U.S. TO BE SCREENED – 1 FEBRUARY

The EU has sent letters to 92 jurisdictions to inform them that they will be subject to 'screening' in order to assess their tax systems. At the same time, Member State representatives in the Code of Conduct Group on Business Taxation are still struggling to agree on the exact criteria to analyse the potential harmfulness of third countries' tax systems. A particular point of contention is the **zero tax rate**, and whether or not this should constitute one of the criteria. A number of countries – led by the **UK** – would like this criterion to be excluded altogether. Reportedly there is some hesitation as well regarding the inclusion of the number of employees as a criterion. Member States' technical experts will continue their work on the criteria. This process will include the consideration of 'gateway tests', including whether a jurisdiction has a financial centre, and no obligation for companies to file annual financial statements. Reportedly, a number of countries – including **Germany** and **France** – will call for the test to include the ratio between foreign direct investment and GDP. Should the technical experts fail to find mutually agreeable solutions, the question will be brought to the agenda of the EU **Finance Ministers** at the 20 February ECOFIN meeting.

With regard to the letters specifically, they emphasise that being included in the screening process does not necessarily imply that a jurisdiction will be included on the final list of non-cooperative jurisdictions – although this does remain a possibility. The jurisdictions to be contacted were chosen on the basis of "objective criteria", such as financial activity, strength of economic ties with the EU and "stability factors".

Of additional interest and as reported notably by the German newspaper Handelsblatt, EU Member States have sent a letter to **US** authorities as well. This means that the prospect of the US being included on the future common list of 'non-cooperative jurisdictions' cannot be totally excluded – although this still remains an unlikely outcome. Indeed, the 92 jurisdictions that will receive the letter are the ones included on the Commission's scoreboard of indicators tables I and II – and thus also includes countries such as Canada, South Korea and Switzerland. Having said that, the screening process takes place in a context of heightened **political tensions** between the US and the

EU due to controversial remarks and actions of the new **Trump Administration**, which adds an additional layer of uncertainty to the process.

In terms of **next steps**, the EU will hold a dialogue with the screened countries throughout the summer. The aim is to present the outcome of the dialogues to the Code of Conduct Group in September, after which Member States will select the jurisdictions that are to be included on the final list of non-cooperative jurisdictions. The Commission will publish a final list of non-cooperative jurisdictions by the end of the year.

# INTERNATIONAL

## DEVELOPING COUNTRIES PLANNING ALTERNATIVE TO OECD BEPS – 25 JANUARY

According to Tax News, **China** and **Ecuador** – the soon-to-be Chairing country of the **G77** – have called on the UN to create a new **international tax organisation** for the purpose of developing tax reform proposals suited for developing countries – in an evident stark contrast to the **OECD BEPS** recommendations. Whilst OECD has launched the so-called **Inclusive Framework** in order to harness the input of the developing world for the BEPS project, a number of developing countries maintain that OECD BEPS may not be in their best interests. G77 groups together a total of 134 developing countries.

## NEW GERMAN PROPOSAL TO ADDRESS TRANSFER OF RIGHTS AND TAXATION – 25 JANUARY

**Germany** has published a new legislative proposal aiming to tackle harmful tax practices linked to the **transfer of rights** of intangibles such as patents, trademarks and licenses. The proposal would put a limitation on royalty deductions under certain conditions, and notably proposes a formula for the calculation of the non-deductible portion of relevant royalty payments.

## "ITALY OFFERS NON-DOMS LA DOLCE VITA WITH TAX BREAKS" – 26 JANUARY

According to the Financial Times (article only available to subscribers), **Italy** has introduced new **tax measures** that would, notably, offer tax exemptions to foreign income in exchange for the payment of an annual €100,000. The exemption is applicable for a period of 15 years, and is hoped to stimulate investment and consumption. The move comes as the **UK** is dismantling its own equivalent scheme.

# OECD

## OECD CRITICISES FRENCH PATENT BOX SYSTEM – 24 JANUARY

According to the French newspaper Le Monde, OECD has criticised the French **patent box** system which offers a reduced 15% tax rate on **intellectual property** – below the standard corporate tax rate of 33,33%. During a closed door meeting, OECD officials concluded unanimously that the French scheme is in breach of **international standards**. Similarly, in the November meeting of EU Finance Ministers, the Code of Conduct Group on Business

Taxation concluded that the French scheme is in breach of the OECD approach (please see Accountancy Europe's Tax Policy Update from 14 November).

## THE PLATFORM FOR COLLABORATION ON TAX PUBLISHES DRAFT TRANSFER PRICING TOOLKIT – 24 JANUARY

**The Platform for Collaboration on Tax** invites comments on a draft toolkit designed to help developing countries address the lack of **comparables** (market prices for goods and services transferred between members of multinational corporations) for transfer pricing analyses. The toolkit is a joint initiative by the IMF, OECD, UN and World Bank, as a response to a request by the Development Working Group of the **G20**. The toolkit is part of a series of reports by the Platform that are designed to help countries that may have limitations in their capacity to design or administer strong tax systems. The discussion draft of the toolkit seeks to put the search for potential comparables in context, emphasising the importance of accurately defining the transaction to ensure the subsequent search for comparables is as efficient and effective as possible. Moreove, sources of potential comparables data are considered, and practical tools such as step-by-step screening templates are suggested. To address situations where there is a systemic lack of comparables data, the draft considers potential policy options such as the development of **safe harbours**. The deadline for submitting comments on the draft is **21 February**.

## NEW JURISDICTIONS COMMIT TO OECD TAX COOPERATION FRAMEWORKS – 26/27 JANUARY

Seven new jurisdictions have signed up to the cooperation framework enabling the automatic sharing of **Country by Country Reporting (CBCR)** information under **BEPS Action 13**. The jurisdictions in question are Gabon, Hungary, Indonesia, Lithuania, Malta, Mauritius and the Russia. This brings the total number of signatories to 57. In parallel, **Thailand** has committed to the **Global Forum** on Transparency and Exchange of Information for Tax Purposes – bringing the total number of signatories to 139. As a reminder, the Global Forum aims to ensure that all jurisdictions adhere to the same standard of international co-operation in tax matters. This is done through a robust monitoring and peer review process.

## OECD INVITES TAXPAYER INPUT ON PEER REVIEWS OF DISPUTE RESOLUTION (BEPS ACTION 14) – 30 JANUARY

The OECD has launched a **public consultation** on the peer review and monitoring process of **BEPS Action 14** (dispute resolution) in Austria, France, Germany, Italy, Liechtenstein, Luxembourg and Sweden. The consultation asks taxpayers to provide feedback on the clarity and availability of guidance and the timely implementation of the peer review processes in each of the countries concerned. The deadline for providing input is **27 February**.

## OECD RELEASES PEER REVIEW DOCUMENTS FOR ASSESSMENT OF BEPS MINIMUM STANDARDS (ACTIONS 5 AND 13) – 1 FEBRUARY

The OECD has published a set of documents which will form the basis of the **peer review** of BEPS Actions 13 (Country by Country Reporting) and 5 (countering harmful tax practices). The documents entail the criteria for assessing the implementation of the minimum standard, as well as the methodology setting out the procedural mechanism that jurisdictions should use to complete the peer review. The documents have been approved by the **Inclusive Framework** on BEPS, whose purpose is to gather input from non-OECD countries.

## STATE AID

### VESTAGER ATTENDS HEARING OF IRISH PARLIAMENT, IRELAND FAILS TO RECOVER 13 BILLION FROM APPLE IN TIME – 31 JANUARY

**Commissioner Vestager** has attended a hearing of the **Irish Parliament** to discuss the European Commission's **Apple** ruling. It seems that against all expectations, the Irish MPs did not give her a hard time – with a mere 10 representatives present and barely half of them left by the end of the hearing. The Commissioner assured during the hearing that a "large majority" of the €13 billion bill would be payable to Ireland; several analysts have pointed out earlier that a portion of the recovered amount is, in fact, owed to other EU Member States. Ireland was supposed to collect the recoverable amount to an escrow account – to wait for a final decision by the Court of Justice of the EU (CJEU) – but missed the 3 January deadline. Commissioner Vestager appeared understanding, however, and contended that the recoverable amount is significant and the deadline is not "the most important thing". Ireland has conducted its own calculations as to the recoverable amount, but reportedly this is unlikely to meaningfully differ from €13 billion.

## OTHER NEWS

### TAX JUSTICE NETWORK'S DIRECTOR: UK IS ALREADY A TAX HAVEN – 24 JANUARY

**Alex Cobham**, the Director of the civil society organisation **Tax Justice Network**, has argued that the **UK** is already, for all intents and purposes, a "**tax haven**". He maintains that the UK together with its "satellite tax havens" poses a threat to global financial transparency. Mr. Cobham's comments come as a response to hints from the British Prime Minister **Theresa May** according to which the UK could turn itself into a low-tax jurisdiction should it fail to secure an acceptable deal with the EU during the **Brexit** negotiations.

### "US WILL 'LEAPFROG' THE WORLD WITH TAX REFORMS, SAYS BRADY" – 1 FEBRUARY

According to the Financial Times (article only available to subscribers), Congressman **Kevin Brady** claims that the US will move ahead in the global **tax competition** through a number of key **tax reforms** that he is currently working on and intends to present to the Congress. As the Chair of the influential Ways and Means Committee, Congressman Brady has significant leverage over the direction towards which the anticipated US tax system restructuring under the new Trump Administration will be steered. He is, notably, working on an **import tax** and enabling companies to write off investments on day one, with the purpose of "levelling the playing field" and ensuring that multinationals have less incentives to re-locate their economic activities offshore. Critics of the planned reforms, however, maintain that the measures could be counter-productive and lead to an increase in prices to US consumers. Congressman Brady stated earlier that he will expect strong criticism both from Europe as well as Mexico. In other news, local and State level groups in the US have expressed serious concerns on the content and pace of the anticipated tax reforms of the Trump Administration.

## EVENTS

- 30/05/2017, ***Tax Day 2017***, Accountancy Europe, Brussels. Source