

Tax Policy Update

6 – 17 MARCH

HIGHLIGHTS

- European Commission: Commission launches public consultation on whistleblower protection – 3 March
- European Parliament: Accountancy Europe attends public hearing of PANA Committee on the role of intermediaries – 6 March
- European Parliament: Commission outlines its follow-up to TAXE Committee demands – 14 March

European Commission

Commission publishes White Paper on the future of EU, prospect of further tax harmonization – 1 March

The European Commission has published its long-anticipated [White Paper](#) on the **Future of the EU 27** by 2025. The paper was launched in view of the Rome Summit on 25 March in which the EU will celebrate its 60th anniversary. The White Paper puts forward five different scenarios for the future direction of the EU 27, from which the Member States will need to choose their preferred one. The scenarios range from taking integration deeper to establishing a loose trading block and having a so-called multi-speed Europe where groups of Member States advance integration at different paces. Of particular interest, Option 3 proposing for groups of Member States to integrate at different paces singles out **taxation** as one of the areas where stronger cooperation is needed. This section of the paper states, notably, that “**greater harmonisation of tax rules and rates** reduces compliance costs and limits tax evasion”. The Commission will organise together with the European Parliament and interested Member States a series of Future of Europe-debates across Europe's cities and regions. The Commission's intention is for the EU 27 to reach some form of agreement on their preferred approach for the future of the EU by the end of this year.

European Commission launches public consultation on whistleblower protection – 3 March

The European Commission has launched a public [consultation](#) on the protection of **whistleblowers**. Overall, the Commission's questionnaire takes a **balanced approach**, providing the opportunity to argue against or in favour of whistleblower protection, or to take a more nuanced position. The Commission's definition of whistleblowing goes

beyond the reporting of illegal activities as it also includes the disclosure of information on a threat or harm to the ‘public interest’. This approach goes beyond currently existing EU sectorial whistleblowing legislation. As a consequence, for example tax evasion and avoidance are put together in the same box. Including (formally legal) **tax avoidance** in the scope of whistleblower protection raises problematic questions about criteria and the types of tax activities that can justifiably be reported. The **deadline** for responding is 29 May.

European Parliament

European Parliament publishes draft report on tax dispute resolution, calls for the Directive to possibly cover indirect taxes in the future – 6 March

The European Parliament’s draft [report](#) on **tax dispute resolution** has been published. The leading MEP on the dossier is **Michael Theurer (ALDE/GER)**. The report proposes several amendments to the Commission proposal which was published on 25 October 2016 (for further details on the Commission proposal, please refer to Accountancy Europe’s [Tax Policy Update](#) from 28 October).

These include, amongst others, further accelerating different procedural stages and ensuring that Member States dedicate an adequate level of human, technical and financial resources for this purpose; not imposing sanctions on the taxpayer submitting a complaint requesting the resolution of double taxation in relation to the same matters until a binding decision is taken; for the Commission to review the functioning of the new rules within five years and then assess the possibility of extending its scope to cover other areas of taxation, such as **indirect taxes**, personal income taxes, or inheritance taxes; and to extend the scope of the Directive to German **Gewerbesteuer** and the Italian **Imposta regionale sulle attività produttive** which, according to the rapporteur, might also cause double taxation cases.

In terms of **next steps**, a vote in Committee is currently scheduled for 8 June. As direct taxation is a matter of **Member States’ competence**, the European Parliament may only submit its non-binding opinion which the European Commission nor the Council need to take into account.

Accountancy Europe attends public hearing of PANA Committee on the role of intermediaries – 6 March

The PANA Committee of the European Parliament has held its third public [hearing](#) on the role of **intermediaries** in setting up dubious offshore structures and accounts as revealed by **Panama Papers**. The hearing [consisted](#) of two panels – focusing on cases of non-compliance with relevant regulation by banks in **France** and **Switzerland**, respectively. The CEO of **Accountancy Europe**, **Olivier Boutellis-Taft**, attended the hearing together with the Manager on taxation, **Paul Gisby**. Prior to the hearing, all panellists submitted written [answers](#) to questions received beforehand (for Accountancy Europe’s [contribution](#), see page 77 onwards).

In his opening remarks, Mr. Boutellis-Taft emphasised the need for ensuring a level-playing field between different tax advisory service providers, and emphasised that the problems identified in the Panama Papers result from a combination of a loss of ethics by a variety of stakeholders and the “**commerce of sovereignty**” – certain jurisdictions selling secrecy to wealthy clients. He called for increasing transparency, simpler tax laws, and international coordination to address the challenges at hand, and emphasised the constructive role that the European accountancy profession can play in this regard.

The attending bank representatives emphasised that their respective institutions had already conducted investigations and implemented reforms and more stringent enforcement of rules as a follow-up to the Panama Papers. Indeed, many of these measures had already been initiated prior to the leaks. The representatives of public

investigatory authorities, for their part, maintained that improving transparency and administrations' access to relevant information (such as on beneficial ownership and account holders) from third jurisdictions is the key. **Albert Allo** from the French Financial Intelligence Service TracFin pointed, moreover, to new emerging risks, such as **crowdfunding** platforms or **virtual currencies** that may be used for money laundering and tax fraud purposes.

Draft report on VAT rates for e-publications published – 9 March

The European Parliament's draft [report](#) on reduced VAT rates for **e-publications** has been published. The leading MEP on the dossier is **Tom Vandenkendelaere (EPP/BEL)**. In the report, Mr. Vandenkendelaere criticises the current different VAT treatment of physical and electronic publications, and **agrees largely with the Commission's** proposed amendments to the VAT Directive to allow for the equal VAT treatment of the two types of publications (for further details on the Commission proposal, please see [Accountancy Europe's Tax Policy Update](#) from 9 December). In terms of **next steps**, a vote in Committee is scheduled for 3 May, whilst a Plenary vote is expected for 31 May. As VAT is a matter of Member States' competence, the European Parliament may only submit its non-binding opinion which the European Commission nor the Council need to take into account.

DEVELOPMENT Committee publishes its opinion on public CBCR – 11 March

DEVE Committee (development) has published its [opinion](#) on the Commission proposal for **public Country by Country Reporting (CBCR)** in the EU. The dossier in the DEVE Committee is led by the MEP **Elly Schlein (S&D/ITA)**. In the draft opinion, Ms. Schlein emphasises the significance of corporate tax income for **developing countries** and their citizens, which suffer from **tax avoidance**. She considers public CBCR to be one of the tools to ensure that developing countries have access to the corporate tax income that belongs to them, and with this regard criticises the Commission proposal for several shortcomings.

First, the scope of the proposal only covers the EU and jurisdictions to be listed on a future EU list of non-cooperative jurisdictions, whilst for the rest of the world only aggregated data needs to be published. Second, the threshold of €750 million is too high and should be lowered down to €40 million. And finally, additional information should be requested from multinationals, including assets, sales and public subsidies received.

The leading Committees on this dossier are ECON and JURI, which are working on the European Parliament's position on the Commission proposal together (for further details on the joint ECON-JURI Committee's work, please refer to [Accountancy Europe's Tax Policy Update](#) from 17 February). They will try to accommodate DEVE Committee's opinion to the main report.

EPRS publishes new studies to inform the work of the PANA Committee – 14 March

The **European Parliament Research Service (EPRS)** has published two studies for the PANA Committee. The purpose of the studies is merely to provide background information and inspiration for the Committee's work, and as such do not represent any official views.

The [first](#) of the two studies is titled *Fighting tax crimes – Cooperation between Financial Intelligence Units*. The study provides an overview of the current state of play in relation to the role, powers and activities of **Financial Intelligence Units (FIUs)** in fighting financial crime in general and **tax crimes** in particular, at both European and international levels. The study concludes, notably, that there is room for better cooperation between tax authorities and FIUs, and points to severe limitations in FIUs' access to relevant data (on beneficial ownership, bank accounts, etc.).

The second [study](#), in turn, is titled *EU-US trade and investment relations: Effects on tax evasion, money laundering and tax transparency*. As the name implies, the study focuses on EU-US trade and investment relations and their potential impact on tax evasion, money laundering and **tax transparency**. The study concludes that the EU-US relations have so far had only little impact on US efforts to combat tax evasion, strengthen anti-money laundering

legislation, and its implementation, and boost tax transparency. Major challenges remain on questions of beneficial ownership, cross-border exchange of information, privacy issues, and designated nonfinancial businesses and professions.

Commission outlines its follow-up to TAXE Committee demands – 14 March

The European Parliament Plenary has held a [public hearing](#) with the European Commission and a representative of the Maltese Presidency, **Ian Borg**, to discuss the follow-up for the **TAXE I & II Committees**. During the hearing, the Council Presidency highlighted the great progress already achieved, with a number of key tax files agreed upon between the Member States. The Presidency will take work forward on the new elements of the **Common Consolidated Corporate Tax Base (CCCTB)** proposals – namely, the super-deduction on R&D, the Allowance for Growth and Investment (AGI) as well as the cross-border loss relief mechanism. **Tax certainty** will also be high on the Council's agenda, and therefore Malta will be pushing for progress on the proposal on **tax dispute resolution**.

Commissioner Moscovici, for his part, emphasized that the Commission will seek to work towards fairer tax competition on a more international level through fora such as **G20**. He, moreover, confirmed that the Commission will publish a proposal to ensure greater scrutiny of **tax advisors** “by summer”, with the aim of clamping down the promoters of “aggressive tax planning” schemes.

In the ensuing remarks by MEPs, several representatives criticized the lack of transparency and unanimity rule in the work of the Council's **Code of Conduct Group on Business Taxation** specifically, and in the Council's tax work broadly. **Werner Langen (EPP/GER)** lamented that the Maltese Presidency's Work Programme makes no reference to tax justice. **Jeppe Kofod (S&D/DEN)** criticized the role of **tax advisors** and called for revoking the **business license** of advisors involved in **tax evasion** – he made no reference to formally legal or otherwise ambiguous concepts such as tax avoidance or aggressive tax planning. **Paul Tang (S&D/NLD)** called for the tax advisory industry to be **regulated** at a EU-level.

Finally and of separate interest, during the hearing **Sven Giegold (Greens-EFA/GER)** called on the Commission to make greater use of **Article 116** of the Treaty on the Functioning of the EU (TFEU) in its future tax proposals. TFEU Article 116 gives the Commission a mandate to legislate on the basis of the **co-legislative procedure** (qualified majority between Member States, European Parliament involved on an equal basis) if particular practices distort competition in the Single Market. **Commissioner Oettinger**, speaking formally on behalf of the Commission, confirmed that the Commission will consider the possibility of using Article 116 on taxation, and also urged the MEPs to exercise greater power on their Member State governments and to harness **public opinion** to force EU countries to cooperate more on taxation.

Council

March ECOFIN to see progress on key VAT files – 9 March

EU Finance Ministers will gather together on 21 March at the ECOFIN meeting to [discuss](#) a number of pending agenda items. On the menu, political guideline debates on the proposals on **reverse charge mechanism** as well as **reduced VAT for e-publications**. It appears that **France** is seeking the opinion of the Council Legal Service on the legality of the proposed derogation from the VAT Directive to allow for the application of the reverse charge mechanism. Consequently, **Czech Republic** may be considering the option of blocking the proposal on e-publications; the former proposal has been consistently called for by the Czechs, whilst the latter is much to the liking of the French. Otherwise, agreement on the main provisions of the proposal on e-publications is close, but on the reverse charge mechanism Czech Republic has been calling for agreement on VAT derogations to be made with **qualified majority** – rather than by unanimity. **The Netherlands** has already [confirmed](#) that it supports both

the e-books proposal as well as granting the option for Member States to temporarily apply the reverse charge mechanism. The Dutch are not planning to apply the reverse charge mechanism themselves, but are interested to observe the impact that its application will have on **carousel fraud** and shifts to alternative forms of VAT fraud in other Member States.

Court of Justice of the EU – Rulings

Ruling on the VAT treatment of e-publications – 7 March

The Grand Chamber of the Court of Justice of the EU (CJEU) has issued a [ruling](#) on the **VAT treatment of e-publications**. The case-code is C-390/15. In its ruling, the Court confirms that the **VAT Directive** forbids Member States from applying a reduced VAT – normally applicable for physical publications – to e-publications. The case concerns, in particular, the VAT treatment of the supply of digital books electronically compared to a reduced rate which is permitted for the supply of digital books on all physical means of support (such as CD-ROMs), which the VAT Directive allows.

Ruling on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares – 8 March

The First Chamber of the Court of Justice of the EU (CJEU) has issued a [ruling](#) on the **tax rules** applicable to **mergers**, divisions, transfers of assets and exchanges of shares. The case code is C-14/16. In the ruling, the Court notably establishes that the Directive 90/434 precludes national legislation which establishes that in order to obtain approval for tax advantages applicable in the case of a cross-border merger, the taxpayer must demonstrate that the operation is based on commercial – rather than tax evasion or avoidance – reasons.

Ruling on the subject-to-tax requirement – 8 March

The Fifth Chamber of the Court of Justice of the EU (CJEU) has issued a [ruling](#) on the **subject-to-tax requirement** in the **Parent-Subsidiary Directive (PSD)**. The case code is C-448/15. In the ruling, the Court establishes that when dividends are paid by a subsidiary established in a Member State to a fiscal investment institution established in another Member State which is taxed at a zero rate of corporate tax, that fiscal investment institution is not taxable by the Member State of origin provided that all of its profits are paid to its shareholders.

International

“Republican tax reform could shake up global economy” – 6/9 March

Shawn Donnan analyses in his Financial Times article (only available to subscribers) the potential [impact](#) that a prospective **tax on US imports** could have on the **global economy**. He maintains that a potentially ensuing appreciation of the US dollar could have significant negative implications for third countries – especially those pegged on the US dollar or with a lot of dollar-denominated debt. Several economic experts and organisations such as the **International Monetary Fund (IMF)** have already begun to assess potential risks of the tax reform, should it become a reality. **Justin Trudeau**, the Prime Minister of **Canada**, has already [expressed](#) his concerns over a

prospective US Border Adjustment Tax. Readers may recall that some lawmakers in the US Congress have been arguing for the introduction of a 20% tax on imports.

In terms of **next steps**, a Tax Reform Bill was initially expected for August at earliest, but this will probably be further postponed. **President Trump** has already confirmed that **Obamacare** will have to be repealed before any tax reforms can be introduced. On 9 March, some [progress](#) with this regard was achieved as the Ways and Means Committee of the House of Representatives approved a new Bill to replace Obamacare – the so-called American Healthcare Act. By extension, the Committee also repealed a majority of Obamacare’s tax provisions, such as premium tax credits targeted for low and middle income class citizens.

“ITALY INTRODUCES €100,000 fl at tax to attract rich foreigners” – 9 March

As reported notably by EU Observer, **Italy** has [introduced](#) a new **flat tax regime** to attract wealthy foreigners to the country. The tax would amount to an annual **€100,000**. The so-called “**new residents regime**” is available to individuals who have been non-tax residents for at least nine years out of the 10 years preceding their transfer to Italy.

“Tax-take from highest earners to drop £700m post-Brexit” – 9 March

According to the Financial Times (article only available to subscribers), the **Office for Budget Responsibility (OBR)** has [argued](#) that the **UK** will lose £700 million in annual tax income from highest earners after **Brexit**. OBR states that whilst this will have a counter-veiling impact on wage inequalities in the country, the negative impact on tax yields will be noticeable. Moreover, as a result of other factors (such as cuts in tax benefits and working age benefits) income inequalities overall are still projected to increase.

OECD

OECD announces further developments in international tax co-operation – 16 March

A number of [developments](#) have taken place in the area of **tax cooperation** within relevant **OECD tax frameworks**. First, six treaty partners of **Hong Kong** have signed a competent authority agreement (CAA) with it, bringing the total number of CAAs to nine. The jurisdictions included Belgium, Canada, Guernsey, the Netherlands, Italy and Mexico (joining Japan, Korea and the United Kingdom). The OECD is expecting more agreements in the coming months so that Hong Kong (China) will be able to exchange data with all interested and appropriate partners.

Second, **Panama** has deposited its instrument of ratification for the Convention on Mutual Administrative Assistance in Tax Matters (the Convention). By doing so, Panama underlines its commitment to fighting tax evasion

and avoidance and has put in place a key pre-condition for delivering on its commitment to start exchanging **Common Reporting Standard** information in 2018. The Convention will enter into force for Panama on 1 July 2017.

State Aid

COMMISSION PUBLISHES HUNGARY'S PLEAS against the decision declaring the **COUNTRY'S ADVERTISEMENT TAX AS ILLEGAL STATE AID** – 13 March

The European Commission has published **Hungary's pleas** against a Commission decision that deemed the country's **advertisement tax** to be illegal state aid (for further details on the Commission ruling, please refer to Accountancy Europe's [Tax Policy Update](#) from 14 November 2016). First of all, Hungary claims that the Commission errs in its judgment that the tax constitutes state aid. Second, the Commission allegedly failed to provide reasons for classifying the scheme as state aid. And finally, Hungary claims that the Commission has abused its powers in the area of state aid. The **Court of Justice of the EU (CJEU)** will have to settle the case.

COMMISSION APPROVES €475 MILLION SUPPORT IN FRENCH OUTERMOST REGIONS – 15 March

The European Commission has [approved](#) a French state aid scheme, in the form of reductions to the **“octroi de mer” tax** for the benefit of locally produced products in the **French outermost regions**. This tax system applies in the French outermost regions, and is in principle levied both on goods imported to those regions as well as on locally produced goods. The aid scheme provides for reductions of tax for a specific list of products produced locally in these regions. The Commission considered that the scheme promotes the development of the outermost regions without unduly distorting competition in the Single Market.

Other News

TJN: OECD is penalising developing countries for trying to tackle tax avoidance – 7 March

Tax Justice Network (TJN) [argues](#) that the OECD's [terms of reference](#) to assess the implementation of BEPS Action 13 penalise countries that seek alternative ways to obtain **Country by Country Reporting (CBCR)** data. This is on the basis that the OECD rules apparently discourage **local filing** and developing countries from harnessing CBCR data from local subsidiaries of multinationals.

ETAF responds to Commission consultation on tax advisors, calls for a EU Code of Conduct – 8 March

The **European Tax Adviser Federation (ETAF)** has [responded](#) to the European Commission's consultation on **tax advisors**. As part of the consultation, ETAF notably expresses support for the establishment of a **EU Code of**

Conduct. ETAF believes that such a Code is the best way to ensure conscientious tax and legal advice services and also to restrict potentially aggressive tax planning schemes.

EESC opinion on tax dispute resolution proposal – 9 March

The **European Economic and Social Committee (EESC)** has published its [opinion](#) on the Commission proposal to improve **tax dispute settlement** in the EU. EESC maintains, notably, that **double taxation** remains one of the biggest tax obstacles to the Single Market. It supports, therefore, the proposed targeted enforcement blocks to address the main identified shortcomings in the **Union Arbitration Convention**. EESC also welcomes the flexibility provided to Member States to agree bilaterally on a case-by-case basis to alternative dispute resolution mechanisms.

Debate on a robot tax continues – 13 March

The debate on a possible **robot tax** continues. Readers may recall from past Tax Policy Updates that the idea was recently popularised by **Bill Gates**/ The Guardian [points out](#) elementary level difficulties that would exist with such a scheme; notably, defining what actually is a ‘robot’ in the first place. Does it start with **software**, and if so, should this be subject to a special robot tax? The article, moreover, maintains that capital investment is already too low, and further slowing it down through a tax on robots could be harmful for the economy at large. The Brussels-based think-tank **Bruegel**, for its part, provides an [overview](#) of what economists think about the proposal. Coming from different perspectives, the economists (including **Yannis Varoufakis**) point to practical challenges and propose solutions for making such a tax workable.

MEP Questions & Answers

VAT in e-commerce – 1 February

The European Commission has replied to a question asked by the MEP **Christel Schaldemose (S&D/DEN)** with regard to **VAT in e-commerce**. In her [question](#), Ms. Schaldemose refers to the Commission’s proposed new Regulation on **geo-blocking** (2016/0152(COD)), and asks for clarifications with regard to the proposal’s potential VAT implications. First, what is the legal situation on the application of VAT in cases where an online shop does not deliver goods to consumers in other EU countries, but merely provides links between a customer and a number of independent carriers. Second, she maintains that the Regulation may be in contradiction to the **destination principle**, as it establishes that VAT is payable in the country in which the company concerned is based, if the consumer assumes responsibility for transporting the goods or arranges for an independent carrier to do so. And third, she asks the Commission what it will do to maintain a level playing field between online shops established in high and low VAT EU countries. In his [reply](#), **Commissioner Moscovici** maintains that the geo-blocking regulation does not change the VAT rules applicable to distance sales of goods laid down in the VAT Directive. Moreover, Member States in the **VAT Committee** have agreed to a guideline stating that the case of distance sales also covers situations where the supplier intervenes indirectly in the transport or dispatch of the goods. He also clarifies the conditions established in the proposal on VAT for e-commerce regarding the application of distance sales rules where the supplier intervenes ‘directly or indirectly’. And finally, Commissioner Moscovici maintains that the issue

of level playing field is addressed, yet again, by the proposal on VAT for e-commerce which replaces the annual distance sales thresholds with one annual EU-wide threshold of €10 000.

Impact of reforming the common consolidated corporate tax base (CCCTB) on public funds in the EU – 9 February

The European Commission has replied to a question asked by the MEPs **Ramón Jáuregui Atondo (S&D/SPA)** and **Jonás Fernández (S&D/SPA)** with regard to the potential impacts of the **Common Consolidated Corporate Tax Base (CCCTB) on Member States' tax bases**. In their [question](#), the MEPs point to a Commission impact assessment on the CCCTB which appears to demonstrate that the application of the system would result in a loss of corporate tax income across the EU. They, therefore, ask the Commission whether the tax base should not be harmonised in a way that does not result in a loss of corporate tax income. In his [reply](#), **Commissioner Moscovici** describes the modelling through which the Commission has assessed the impact of the CCCTB, and confirms that the methodologies used point to a reduction in overall corporate tax income. However, he elaborates that the modelling does not take into account the positive tax outcomes of the anti-abuse measures entailed in the CCCTB proposals, and argues that overall tax income (from VAT, labour taxes etc.) will rise due to the economic benefits of the common consolidated base.

Blacklist of tax havens – 23 February

The European Commission has replied to a question asked by the MEP **Jérôme Lavrilleux (EPP/FRA)** with regard to the EU blacklist of “tax havens”. In his [question](#), Mr. Lavrilleux expresses concerns towards potential diplomatic consequences of the current EU work on establishing a common list of non-cooperative jurisdictions, and asks the Commission what criteria are being used for the exercise. In his [reply](#), **Commissioner Moscovici** maintains that the process will be conducted, as much as possible, in line with relevant OECD and international standards. He moreover states that zero corporate taxation as such has been excluded as a criterion as such, but will be considered together with other criteria to identify potentially problematic jurisdictions.

Cases of tax evasion – 23 February

The European Commission has replied to a question asked by the MEP **Stelios Kouloglou (GUE-NGL/GRE)** with regard to **tax evasion** cases. In his [question](#), Mr. Kouloglou refers to the so-called **football leaks** revealing dubious tax planning activities by top athletes. He asks the Commission whether it is aware of the cases, and whether it will impose stricter rules against tax evasion. In his [reply](#), **Commissioner Moscovici** points out that the Commission as such does not have investigative powers into potential cases of tax evasion. He, however, points to the progress achieved by the EU in the areas of tax transparency and anti-money laundering, and maintains that the Commission will push these standards at an international level as well.

Plans to reduce corporation tax in the UK – 24 February

The European Commission has replied to a question asked by the MEP **Barbara Kappel (ENF/AUS)** with regard to **UK plans to reduce its corporate tax rates** as a result of **Brexit**. In her [question](#), Ms. Kappel notably asks the Commission what is the minimum tax rate that would be considered as unfair tax competition. In his [reply](#), **Commissioner Moscovici** points out that as long as the UK is a member of the EU, it will remain bound by relevant tax transparency and anti-abuse rules. He states that there is no minimum tax rate threshold that would automatically indicate unfair tax competition, as Member States have complete freedom in setting their corporate tax rates.

State aid and tax rulings, particularly in Germany – 24 February

The European Commission has replied to a question asked by the MEP **Fabio De Masi (GUE-NGL/GER)** with regard to **state aid and tax rulings**. In his [question](#), Mr. De Masi asks the Commission how many rulings it has

requested, received and examined in detail from each of the 28 Member States. He asks, moreover, whether the apparently small number of tax ruling investigations initiated by the Commission is due to a lack of material and human resources. In her [reply](#), **Commissioner Vestager** confirms that the Commission has requested and received approximately 300 company files from Member States. So far, a majority of these rulings do not point to potential infringements in state aid rules. The Commission has opened seven formal investigation procedures in the context of the tax ruling investigation, and closed four of them with final decisions.

Anti-Tax Avoidance Package – 27 February

The European Commission has replied to a question asked by the MEP **Hannu Takkula (ALDE/FIN)** with regard to the **Anti-Tax Avoidance Package (ATAP)**. In his [question](#), Mr. Takkula asks the Commission what further measures it proposes to take in the context of the ATAP, and what time frame has it set for the finalisation of the package. In his [reply](#), **Commissioner Moscovici** provides a list of anti-tax avoidance measures undertaken by the Commission in the past year. Of particular interest, he states that the Commission is expecting an agreement on the **Common Corporate Tax Base (CCTB) – without ‘consolidation’** – in 2019. Moreover, the Commission is planning to propose “greater scrutiny” of tax advisors later in 2017 (NB most likely by summer).

CO₂-related car taxation – 28 February

The European Commission has replied to a question asked by the MEP **Victor Negrescu (S&D/ROM)** with regard to **CO₂-related car taxation**. In his [question](#), Mr. Negrescu asks the Commission whether it has any initiative regarding the uniformity in the implementation of CO₂-related car taxation. In his [reply](#), **Commissioner Moscovici** states that given the apparent lack of interest in Member States in pursuing action at EU level at the moment, there are no new initiatives planned by the Commission in the area of vehicle taxation.

VAT refund in airport duty-free shops – 28 February

The European Commission has replied to a question asked by the MEP **Izaskun Bilbao Barandica (ALDE/SPA)** with regard to **VAT refund in airport duty-free shops**. In her [question](#), Ms. Bilbao Barandica asserts that duty-free shops at European airports may have been committing **VAT fraud** by not refunding the VAT recuperated to the customers. Instead, the money is kept by the companies which operate the shops. As this money should be going to the people making the purchases, there is no information on **whether it shows up in the companies’ operating accounts** or how it is taxed. She therefore asks the Commission whether it is aware of this practice and if so, does it consider it to be legal. Moreover, she asks the Commission whether it will take action to inform consumers of their right to receive these refunds, and what information does the Commission have about how this revenue is recorded in the shops and how it is taxed. In his [reply](#), **Commissioner Moscovici** confirms that the Commission is aware of the situation but that VAT on sales to travellers leaving the EU is not applied and, consequently, no VAT needs to be refunded. The practice is, according to the Commissioner, in line with EU VAT legislation. It is the commercial decision of shopkeepers to decide to apply a single or a different price for sales of intra-EU and third country travellers, and the competent Member State authorities must lay down the conditions for the correct application of VAT in such situations.

EU plan for potential VAT change – 1 March

The European Commission has replied to a question asked by the MEP **Lefteris Christoforou (EPP/CYP)** with regard to potential EU plans for **VAT reform**. In his [question](#), Mr. Christoforou refers to un-specified discussions about a potential abolition of VAT. He asks the Commission whether, indeed, it is planning to abolish VAT, what was **Member States’ VAT contribution to the EU budget**, whether the Commission plans to introduce changes to this, whether Member States return VAT for goods bought by non-EU nationals and what is the amount of VAT returned in this way by each Member State, and is there any plan to abolish this VAT return procedure. In his [reply](#), **Commissioner Moscovici** states that the Commission is not planning to abolish VAT. He describes the planned reforms of the EU VAT system as presented in the VAT Action Plan, and confirms that as long as the current EU

own resource provisions remain unchanged, there will be no changes to Member States' VAT contributions to the EU budget either. Finally, with regard to the conditions for the application of the exemption of supplies of goods to customers leaving the EU, the Commission does not hold data on the amount of VAT returned in this way by each Member State. The Commission, moreover, does not intend to propose any changes to this provision which is in line with the principle of taxation at destination.

The future of corporate tax - 1 March

The European Commission has replied to a question asked by the MEP **Joëlle Mélin (ENF/FRA)** with regard to the **Common Consolidated Corporate Tax Base (CCCTB)**. In his [question](#), Mr. Mélin refers to “numerous studies” indicating that a CCCTB would have a negative impact of 0,15% on the GDP with variations between Member States, broaden the tax base by 7,9% and increase the tax burden of some European companies. He therefore asks the Commission whether it will reconsider the proposal and encourage Member States to opt for a gradual variation in corporate tax. In his [reply](#), **Commissioner Moscovici** that according to the Commission impact assessment, CCCTB would increase economic growth by 1,2% and increase investment by up to 3,4%. The direct impact on the tax base differs across countries, with a reduction for the EU overall. The tax burden will ultimately depend also on the tax rates, which Member States continue to determine. For the computation of the economic impacts it was assumed that the direct impact on the tax burden is offset by changes in tax rates.

Increase in the number of tax rulings - 6 March

The European Commission has replied to a question asked by the MEP **Fabio De Masi (GUE-NGL/GER)** with regard to **tax rulings**. In his [question](#), Mr. De Masi refers to figures according to which the number of tax rulings increased from 2013 to 2015. He asks the Commission whether it sees this as the result of increased scrutiny, what its overall assessment of the trend is, and whether it will ask for further details from concerned Member States. In his [reply](#), **Commissioner Moscovici** assesses that the increased number of tax rulings may be the result of increased desire for tax certainty, as well as of greater care in reporting. Finally, **the Commission's analysis of the information received from its general tax ruling inquiry in all Member States is still ongoing**. The Commission is still requesting information from selected Member States, and it is too early to draw any conclusions.

Transfer pricing in the context of the EU single market - 6 March

The European Commission has replied to a question asked by the MEP **Jiří Pospíšil (EPP/CZE)** with regard to **transfer pricing** in the EU Single Market. In his [question](#), Mr. Pospíšil asks the Commission how it monitors the operation of the transfer pricing system indifferent Member States, and whether it is preparing new legislation in the area of transfer pricing, or will it leave the setting of transfer pricing rules up to the Member States. In his [reply](#), **Commissioner Moscovici states that the Commission monitors comprehensively Member States' transfer pricing systems**. The Commission has until now prioritised a soft-law approach (i.e. guidance rather than legislation), and coordinating rather than harmonising TP approaches has so far proven to be more efficient, according to the Commissioner. However, implementation of the outputs of the recent G20/OECD BEPS work on TP is currently being closely monitored and the Commission may consider, on this basis, whether stronger rules are required in the EU to prevent TP manipulation.

President of the Commission in favour of tax evasion - 8 March

The European Commission has replied to a question asked by the MEP **Jean-Luc Mélenchon (GUE-NGL/FRA)** with regard to the role of **Luxembourg** in hindering tax cooperation in the EU. In his [question](#), Mr. Mélenchon notably asks the Commission for details on Luxembourg's positions in the **Code of Conduct Group** on Business Taxation.

In his [reply](#), **Commissioner Moscovici** states that it would not be appropriate for it to provide details on different Member States' positions in the Group, so as to encourage an open debate.

Financial transaction tax – 8 March

The European Commission has replied to a question asked by three French MEPs, **Steeve Briois (ENF)**, **Bernard Monot (ENF)**, **Dominique Bilde (ENF)**, with regard to the **Financial Transaction Tax (FTT)**. In their [question](#), the MEPs ask the Commission why progress on the FTT negotiations has stalled, what is the Commission's position on making high-frequency trading and intraday transactions subject to the tax, and whether the Commission would eventually seek to expand the FTT to all EU Member States. In his [reply](#), **Commissioner Moscovici** states that the participating 10 Member States have already reached partial informal agreement on some of the elements of the tax. Discussions continue on issues such as the treatment of pension funds, impact on the real economy, list of taxable financial instruments, tax rates etc. Moreover, currently, there is an informal agreement between the participating Member States to apply the tax on a gross basis. High frequency trading is also captured by this approach. Moreover, he reminds that all Member States that want to participate in the FTT may do so.

Measures to combat tax avoidance – 8 March

The European Commission has replied to a question asked by the MEP **Pascal Arimont (EPP/BEL)** with regard to combating **tax avoidance**. In his [question](#), Mr. Arimont refers to a report by the civil society organisation **Eurodad**, according to which the number of **tax rulings** has almost trebled in a mere two years. He asks the Commission whether it is **investigating the “tax deals”** referred to in the report, and whether any possible investigations have already provided results. In his [reply](#), **Commissioner Moscovici** confirms that the Commission is currently conducting a **state aid inquiry** into national tax ruling practices in all Member States. It has asked Member States for information about individual tax rulings in order to assess the facts on a case-by-case basis. The Commission has in particular been investigating tax ruling cases in **Luxembourg** (Fiat, Amazon, McDonalds and Engie), **the Netherlands** (Starbucks) and **Ireland** (Apple). As a reminder, the Commission has already concluded in the cases of Fiat, Starbucks and Apple that the respective Member States were granting state aid to these companies.

LIMITS ON RECOVERY OF SURPLUSES OF 'DEFINITELY TAXED INCOME' – 13 March

The European Commission has replied to a question asked by the MEP **Tom Vandenkendelaere (EPP/BEL)** with regard to the recovery of surpluses of **definitely taxed income (DTI)**. In his [question](#), Mr. Vandenkendelaere refers to **Belgium's** application of the **Parent-Subsidiary Directive (PSD)**, whereby dividends received are first added to taxable income, only after which they are deducted (up to a limit of 95%). However, that deduction is limited to the positive balance of taxable profits which remains after a so-called 'third operation' in the tax calculation. If, after that 'third operation', no taxable profits remain, or those that remain are inadequate, the DTI deduction cannot be applied, or can only partially be applied. The remainder — the 'TDI surplus' — is transferred to a subsequent taxable period (with no limitation as to time). He asks the Commission whether a Member State which uses the above exemption method has the option of limiting the use of so-called DTI surpluses with reference to the **company's** taxable profits (€1 000 000 + 65% of the balance over and above that), thus creating a minimum tax base. In his [reply](#), **Commissioner Moscovici** states that where a Member State has chosen the exemption system provided in the PSD and the legislation of that Member State allows losses to be carried forward to subsequent taxable periods, that provision precludes legislation of a Member State which reduces, to the amount of the dividends received, the

losses of the parent company which may be carried forward. However, the Commission does not, at this stage, have sufficient details at its disposal to fully assess the legality of the Belgian scheme.

Events

- 29/03/2017, *Digital Day*, Accountancy Europe, Brussels. [Source](#)
- 30/03/2017, *Do you have a taxable presence in a country? - The new reality Permanent and Fixed (VAT) Establishments in the post-BEPS world*, CFE, Brussels. [Source](#)
- 11/04/2017, *Reforming European VAT: Boosting Trade and Achieving Modernisation*, Public Policy Exchange, Brussels. [Source](#)
- 30/05/2017, *Tax Day 2017*, Accountancy Europe, Brussels. [Source](#)
- June, *Conference on fair taxation*, European Commission, Brussels. Further details tbc