Tax Policy Update

17 – 28 April

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HIGHLIGHTS

- Council: UK National Audit Office publishes report on VAT fraud in e-commerce, impact on Council negotiations – 19 April
- European Parliament: association of French companies criticises public CBCR – 21 April
- European Parliament: PANA Committee publishes two studies on tax intermediaries and the accountancy profession – 24/27 April
- International: Trump Administration unveils tax reform plans, markets unimpressed – 26 April

European Commission

Commission publishes taxation paper on tax certainty – 7 April

The European Commission has published a taxation paper on **tax certainty**. The paper analyses main sources of tax uncertainty, reviews the economic and empirical literature on the effects of tax uncertainty, and examines certain policy measures to tackle the issue at the domestic, international and EU levels. The paper concludes that in order to improve tax certainty, policy makers should focus their attention on planning tax reforms and tax changes properly, clearly communicating their content and timing, and more generally establishing a structured approach in managing the tax policy process. At the international level, the best policy answers are boosting cooperation on tax matters, developing common approaches to fighting “aggressive tax planning”, and agreeing on a clear and sustainable distribution of tax revenues for cross-border investment, and more transparent and “non-harmful” **tax competition**.

Taxation papers are written by European Commission staff or experts working in association with them. They are intended to increase awareness of the work being done by the staff and to seek comments and suggestions for further analyses. The views expressed in Taxation Papers do not necessarily reflect the views of the European Commission.

Commission to prepare a technical study on energy taxation – 18 April

The European Commission has launched a questionnaire to gather stakeholders' views on certain technical aspects of the EU legislation on **energy taxation**. The Commission proposed in 2011 a reform of the **Energy Tax Directive** with the aim of modernising EU rules on energy taxation. The main objectives of the reform were to restructure the taxation of energy products, remove current imbalances and distortions, and support the EU's wider environmental goals. The Commission, however, withdrew the proposal in 2015 due to a lack of support by Member States in the Council. The deadline for providing answers to the consultation is 21 May 2017.

European Parliament

Association of French companies sends letter to MEPs criticizing public CBCR – 21 April

The **association of French enterprises (MEDEF)** has sent a letter to MEPs providing concrete examples of how **public Country by Country Reporting (CBCR)** may be damaging for European businesses. MEDEF is concerned, in particular, that foreign groups will have access to business sensitive information such as a sudden increase in the number of employees in a jurisdiction before public announcements. Risks to business secrets are also posed by situations where a group only has one entity in a given country. In parallel, MEPs of the ECON Committee are currently holding negotiations on their draft report on public CBCR. A next hearing of the ECON Committee on the topic will take place on 3 May.

PANA Committee publishes two studies on tax intermediaries and the accountancy profession – 24/27 April

PANA Committee secretariat has published two anticipated studies on the **role of intermediaries** in setting up and establishing offshore structures and schemes as revealed by the Panama Papers scandal:

- Rules on **independence and responsibility** regarding auditing, tax advice, accountancy, account certification services and legal services
- Role of **advisors and intermediaries** in the schemes revealed in the Panama Papers

The studies are non-binding legally. However, their findings and recommendations will inspire PANA MEPs' work, and provide **legitimacy** for the Committee's own eventual recommendations. As such, the studies provide a glimpse of what can be expected from the PANA Committee's work.

The **first study**, on the rules of independence, provides a comparative mapping overview of the regulation of **"tax professionals"** across a set of jurisdictions (UK, Germany, Luxembourg, Cyprus, Switzerland, British Virgin Islands). The study puts forward policy recommendations to encourage intermediaries to deliver a positive contribution to combatting **tax evasion, tax avoidance and money laundering**. These include extending the responsibility of **auditors** on tax affairs through a requirement for tax returns to be based on audited financial statements, as well as developing a EU framework for compulsory **common ethical standards** (best practice recommendations) for tax advisors in each country. The latter recommendation stems from a realisation that the rules governing the provision of tax advice across the EU differ significantly from country to country, and from profession to profession.

The **second study** on the role of advisors and intermediaries, for its part, analyses the role of advisors and intermediaries (including **auditors** and **accounting firms**) involved in different phases of the identified decision-making cycle (advice, creation, maintenance, enforcement). The study's findings are based, largely, on the Panama Papers database and thus provide an overview of the situation only as far as Panama and Mossack Fonseca are concerned – rather than of the overall picture. It puts forward a set of recommendations to discourage advisors and intermediaries from facilitating **tax avoidance, tax evasion and money laundering**, through offshore structures. These recommendations include, notably, targeting only the most essential intermediaries (trust companies and banks) for the creation and maintenance of offshore structures, and establishing stronger rules on independence and responsibility as well as **obligatory reporting** of tax avoidance schemes on advisors and intermediaries.

In terms of **next steps**, the PANA Committee will organise a hearing on **3 May**. During the hearing, the authors of the two studies will present their findings to the MEPs. PANA Committee already held a first hearing on 27 April, introducing studies on the impact of Panama Papers schemes on certain Member States, closing loopholes and the cooperation between Financial Intelligence Units (FIUs).

European Parliament approves opinion on hybrid mismatches towards third countries – 27 April

The European Parliament has voted on and approved its opinion on the Commission proposal concerning **hybrid mismatches** with third countries. The vote passed with 591 votes in favour, 36 against and 12 abstentions. The Parliament opinion, notably, adds a definition for **disregarded permanent establishment**. Moreover, the leading MEP on the Parliament opinion, **Olle Ludvigsson (S&D/SWE)**, has strongly criticised the exemptions that the Council will grant to the banking sector. In parallel, EU Member States already approved their position on the Commission proposal on 21 February – way before the European Parliament. The finalisation of the European Parliament's opinion means that the dossier can now be finalised. Member States are not obliged to take the Parliament's opinion into account.

Council

UK National Audit Office publishes report on VAT fraud in e-commerce, impact on Council negotiations – 19 April

The **National Audit Office (NAO)** of the **UK** has published a new report on **VAT fraud** in **e-commerce**. The report states that between £1 and £1.5 billion pounds were lost in tax revenue in 2015-16 due to online VAT fraud and errors. A particular challenge is posed by so-called **fulfilment houses** – warehouses within the EU to which goods are imported before they are bought by EU consumers through online marketplaces. This ensures a speedier delivery of the goods to the final consumers.

A British delegation presented these findings to their EU colleagues at a recent technical level meeting in the Council on the Commission's VAT for e-commerce proposals published in December 2016. The delegation argued that goods destined for fulfilment houses are often customs-cleared for example through bulk imports, but the goods are frequently under-valued or described wrongly. This makes it difficult to determine the VAT value of such supplies, thus leading to VAT income losses. Since fulfilment houses are separate entities from the suppliers of the goods, they are not obliged to collect VAT. The UK called on the Commission and fellow Member States to consider the challenge of fulfilment houses as part of the VAT for e-commerce negotiations. Reportedly several Member States were taken by utter surprise by the very existence of such practices.

Progress achieved on the proposal on VAT rates for e-publications – 26 April

At a later meeting focusing, specifically, on the Commission proposal for reduced **VAT rates** for **e-publications**, visible progress towards a final agreement as achieved. The Maltese Presidency is aiming for a full agreement in June, and has expressed optimism in this regard. At the same time, **Czech Republic** remains a major obstacle as it considers the e-publications proposal's fate to be interlinked with that of the **reverse charge mechanism**. As a reminder, Czech Republic is unhappy with the proposed criteria for eligibility to apply the reverse charge mechanism as it does not currently fulfil them. **Hungary** would like to be able to apply reduced rates for online services, **Austria** is skeptical in principle towards reduced rates, whilst the **UK** is expected to resume its calls for reduced rates on certain hygiene and sanitary products.

Court of Justice of the EU – Rulings

Ruling on input tax deduction rights – 26 April

The Fourth Chamber of the Court of Justice of the EU (CJEU) has issued a ruling on **input tax deductions**. The case code is C-564/15. In its ruling, the Court notably states that the purchaser of an item of property may be deprived of the right to deduct the VAT paid to the seller when that tax was not due. This must be on the basis of an invoice drawn up in accordance with the rules of the ordinary VAT regime, where the relevant transaction came under the reverse charge mechanism, and the seller paid that tax to the Treasury. However, to the extent that reimbursement of the unduly invoiced VAT by the seller to the purchaser becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, those principles require that the purchaser be able to address his application for reimbursement to the tax authority directly.

International

Tax evasion continues to haunt Swiss banks despite their efforts – 17 April

Financial Times (article only available to subscribers) describes the difficulties and challenges around **tax evasion** that continue to hinder Swiss banks despite their best efforts to improve transparency and rigidity of client controls. The article refers, for example, to **Credit Suisse** which recently fell under investigation by several Member States for suspected tax evasion and money laundering by some of its clients.

Irish Government Considers SME Tax Relief – 17 April

Tax News writes that the Irish Department of Jobs, Enterprise, and Innovation is to assess the country's **tax system** with particular focus on its impact on SMEs. Reportedly, the Government is planning to introduce a special tax scheme tailored for the particularities and needs of SMEs, in the "medium term", and has launched a project inviting stakeholder contributions for this purpose.

Vietnam to introduce country by country reporting – 24 April

The civil society organisation **Tax Justice Network (TJN)** reports on **Vietnam** enacting legislation to introduce **Country by Country Reporting (CBCR)** in the country. The new law will introduce a legal requirement for domestic subsidiaries to provide a copy of the global CBC report directly to the national tax authority. Most interestingly, this means that the requirement falls outside the scope of OECD's work on CBCR as Vietnam will not rely on **tax treaties** or information exchange agreements to the get information on foreign parent companies – the responsibility on providing the full CBC report lying solely on the taxpayer.

Trump Administration unveils tax reform plans, markets unimpressed – 26 April

The **Trump Administration** has unveiled details of its anticipated **tax reform** plans. Most of the unveiled items were expected. The main elements include a reduction of the **corporate tax** from 35% to 15%; a move to a **territorial tax** system; eliminating tax breaks for "special interests"; a one-time reduced tax rate to incentivise companies to **repatriate** trillions of dollars of profits held overseas; and reducing the seven brackets of **individual income tax** to three – 10%, 25% and 35%. What is not in the reform announcement is equally interesting – namely, the so-called **border adjustment tax (BAT)** which would have imposed an extra tax on imported goods. It appears that Trump is now not keen on a BAT, but the Republican House Speaker **Paul Ryan** and a faction within the Republican Party will continue to push for it. The business community is divided on the BAT, although large multinationals are (understandably) in the opposing camp.

As reported notably by the Financial Times (article only available to subscribers), the markets have greeted the tax plan announcement with scepticism. Investors are not impressed by the lack of new elements and, most of all, consider that many of the reforms will be politically unfeasible.

There is still no announced timeline for when a final tax bill would be published. Trump was aiming for August, but this is now looking less likely. This has led voices within the Republican party to urge Trump to first focus on reforming **business taxation**, and only then to address **individual taxes**. The current intention of the Administration is to propose a comprehensive tax reform package combining these two dimensions.

Another key issue that is likely to emerge is the impact of the announced tax cuts on **public finances**. Whilst the Republicans are, almost by default, in favour of tax cuts, a faction of budget hawks within the Party are concerned that the ensuing loss of tax income will increase **public debt** by hundreds of billions of dollars. The Administration maintains, however, that the tax plans will be revenue-neutral as any cuts in tax yields will be compensated by an increase in economic growth stemming from business investment and higher aggregate demand of consumers.

OECD

United Arab Emirates joins multilateral Convention on tax matters – 21 April

Unites Arab Emirates (UAE) has signed up to the **Multilateral Convention** on Mutual Administrative Assistance in Tax Matters, thereby becoming the 109th jurisdiction to commit to it. The Convention provides for all forms of administrative assistance in tax matters, including exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection. It also guarantees safeguards for the protection of taxpayers' rights.

Other News

Eight reasons why public country by country reporting is good for business in Europe – 20 April

The civil society organisation **Eurodad** has published eight reasons for why **public Country by Country Reporting** is good for businesses in Europe. These include (1) the creation of a **level-playing field** between large multinationals and SMEs; (2) better informing **investors** of companies' tax practices; (3) extending the reporting requirement from banking and extractives to all sectors; (4) ensuring a fairer and more stable business environment for multinationals; (5) the supposed lack of **harmful economic impact** on European businesses; (6) the fact that several companies are already voluntarily disclosing their CBC information publicly; (7) that tax is apparently not too **complicated** to understand; and (8) most companies already recognise the need for increased transparency.

Events

- 28/04/2017, ***EU development partnerships and the challenge posed by international tax agreements***, EESC, Brussels. Source
- 05/05/2017, ***Debate on the Taxation of the Digital Economy***, EESC, Brussels (also webstream). Source
- 24/05/2017, ***A favourable tax system for fair competition and growth***, EESC, Brussels. Source
- 30/05/2017, ***Tax Day 2017***, Accountancy Europe, Brussels. Source
- 06/06/2017, ***Making whistleblowing work for everyone***, Accountancy Europe, Brussels. Source
- 08/06/2017, ***Reforming European VAT***, Public Policy Exchange, Brussels. Source
- June, ***Conference on fair taxation***, European Commission, Brussels. Further details tbc