ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

29 May – 9 June

HIGHLIGHTS

- European Parliament: President Juncker attends PANA hearing, blames tax intermediaries and accountants – 30 May
- Council: programme of the three next Presidencies published, tax intermediaries proposal on the top of the tax menu – 2 June
- OECD: multilateral BEPS Convention signed at OECD – 7 June

European Commission

Commission publishes report on the effectiveness of tax incentives for venture capital and business angels – 8 June

The Commission has published a new study on **tax incentives** for **venture capital** and business angels. The study investigates the part that tax incentives for venture capital and business angels can play in fostering investment, with the intention of promoting the diffusion of best practice across Member States. It demonstrates, notably, that such incentives are used across all EU Member States, and provides an overview of the status quo as well as the relative strengths and weaknesses of the different regimes. In doing so, the study recognises that tax incentives form part of a broader set of policy tools and that it is important to consider the broader policy mix when analysing tax incentives.

European Parliament

President Juncker attends PANA hearing, blames tax intermediaries and accountants – 30 May

The President of the European Commission, **Jean-Claude Juncker**, has attended a hearing of the PANA Committee. The Committee MEPs questioned the President on his role as the former Finance and Prime Minister of **Luxembourg**, as well as on his commitment to pushing forward the fight against tax avoidance and evasion at the EU-level. During the hearing, President Juncker notably expressed his support for using Article 116 of the Lisbon

Treaty (covering cases where competitive distortions in the Single Market may occur) in order to circumvent the **unanimity rule** on tax dossiers in the Council. In addition, the President added that tax intermediaries such as **accountants** and lawyers are a real problem, and that the Commission will look into their role in 'aggressive tax planning'. A proposal on tax intermediaries is expected for 21 June. Finally and to the disappointment of many MEPs, Juncker did not take clear public responsibility over his role in the Luxembourgish tax system, and denied having had meetings with representatives of multinationals in his capacity as the Finance and Prime Minister of Luxembourg.

Ahead of the hearing (29 May), the Greens-EFA Group published a report directly blaming President Juncker for his conduct as the Prime and Finance Minister. The report describes how the Luxembourgish tax system functions, some of the gaps and loopholes within it, and criticises Luxembourgish governments for blocking progress on tax files at the EU-level.

PANA hearing with Portuguese Secretary of State of Tax Affairs – 30 May

The PANA Committee of the European Parliament also held a hearing with **Fernando Rocha Andrade**, the Secretary of State for Tax Affairs of **Portugal**. During the hearing, the Minister defended the tax arrangements of the free trade zone of **Madeira**, and maintained that it is in line with EU rules. The Minister also highlighted the importance of transparency and information-sharing to fight tax evasion. The Minister added that EU policies on tax evasion are vital to build a better system. Along with a good cooperation, the Minister identified transparency as one of the main goals for Portugal and the European Union.

European Parliament draft report on administrative cooperation and combating VAT fraud – 31 May

The European Parliament draft report on **administrative cooperation** and combating **fraud** in the field of **VAT** has been published. The report has been drafted by the MEP **Luděk Niedermayer (EPP/CZE)**, and relates to a Commission proposal on the topic from December 2016. The MEP has not proposed any significant amendments to the original Commission proposal, and recommends that the Parliament adopts it fast. As a reminder, since this is a VAT topic, the Member States will decide by unanimity whilst the European Parliament only submits its non-binding opinion.

European Parliament votes in favour of reduced VAT rates for e-publications – 1 June

The European Parliament Plenary has voted in favour of the Commission proposal to allow Member States to align the **VAT treatment** of **e-publications** with that of physical ones. The proposal passed by an overwhelming majority of 590 votes in favour, 8 against and 10 abstentions. The file was led by the MEP **Tom Vandenkendelaere (EPP/BEL)**. Now that the Parliament has submitted its non-binding opinion and Member States have reached a unanimous agreement on the dossier, the file can be finalised and become EU law.

Council

Programme of the three next Presidencies published, tax intermediaries proposal on the tax menu – 2 June

The programme of the next three **Council Presidencies** has been published. The document highlights the coordinated priorities of the next 18 months for the three presidencies of **Estonia**, **Bulgaria** and **Austria**. In doing so, the three Member States aim for greater continuity between their 6-month Presidency mandates. This latest programme mentions that the fight against **tax fraud** and ensuring **fair and efficient taxation** will be high on the agenda for the 18 months to come. The document separately mentions the **Common Consolidated Corporate Tax Base** (**CCCTB**), disclosure rules for **tax intermediaries**, the definitive VAT regime as well as VAT on e-commerce as areas where the three Presidencies intend to push for progress. These are, in other words, those tax files that the three next Presidencies will prioritise.

Court of Justice of the EU – Rulings

RULING ON VAT RULES GOVERNING 'FREE ZONES' – 1 June

The Fifth Chamber of the Court of Justice of the EU has issued a ruling on the **VAT rules** governing the so-called **'free zones'** in the VAT Directive. The case code is C-571/15. In the ruling, the Court notably establishes that the reference to 'one of the arrangements or situations referred to' in Article 156 of the VAT Directive includes free zones. By extension, the removal of goods from customs supervision in a free zone does not give rise to the chargeable event or make import VAT chargeable if those goods did not enter the economic network of the EU.

International

"US 2018 Budget Says Tax Reform To Be Deficit-Neutral" – 29 May

As reported notably by Tax News, the **US** budget for 2018 is based on the assumption that the upcoming **tax reforms** will be revenue-neutral. The budget plan refers to lower individual and corporate tax rates, but makes no reference to the (in-)famous 15% level that the Trump Administration has been referring to in past months.

"Wealthiest households evade up to one-third of their tax obligations" – 1 June

The Guardian has reported on a recent academic study which claims that the 0,01% of **wealthiest households** are evading up to 30% of their tax obligations. The contrast with the wider population is stark – in average, citizens evade 'only' approximately 2% of their tax obligations. The study is based, notably, on data from the **Panama Papers** leaks.

OECD

OECD releases peer review document for assessment of the BEPS Action 6 minimum standard – 29 May

The OECD has published a document which will form the basis of the peer review of the **Action 6** minimum standard on preventing the granting of **treaty benefits** in inappropriate circumstances. The document includes the Terms of

Reference which sets out the criteria for assessing the implementation of the Action 6 minimum standard, and the Methodology which sets out the procedural mechanism by which the review will be conducted.

Thailand and Djibouti join inclusive framework on BEPS – 31 May/2 june

Djibouti and **Thailand** have joined the **Inclusive Framework** on **BEPS**, becoming the 97th and 98th jurisdictions, respectively, to commit to it. The Inclusive Framework was established in January 2016, after the G20 Leaders urged the timely implementation of the BEPS package released and called on the OECD to develop a more inclusive framework with the involvement of interested non-G20 countries and jurisdictions, including developing economies.

The Bahamas decides to sign multilateral tax information sharing convention – 1 June

The Bahamas and Guatemala have signed up for the **Multilateral Convention** on Mutual Administrative Assistance in Tax Matters. The Convention provides for a wide range of tax co-operation to tackle **tax evasion** and avoidance, and guarantees extensive safeguards for the protection of taxpayers' rights. Already 111 countries and jurisdictions have joined the Convention.

multilateral BEPS Convention signed at OECD – 7 June

Ministers and high-level officials from 76 countries and jurisdictions have signed or formally expressed their intention to sign a **multilateral convention** that will implement a series of **tax treaty measures** to update the existing network of bilateral tax treaties and reduce opportunities for **tax avoidance** by multinational enterprises. The new convention will also strengthen provisions to resolve **treaty disputes**, including through mandatory binding arbitration, thereby reducing **double taxation** and increasing tax certainty. The new convention, which is the first multilateral treaty of its kind, allows jurisdictions to transpose results from the OECD BEPS Project into their existing networks of bilateral tax treaties. It was developed through negotiations involving more than 100 countries and jurisdictions, under a mandate delivered by G20 Finance Ministers at their February 2015 meeting.

Other News

"Firms In High-Tax EU States Support Single EU-Wide Rate" – 29 May

Tax News refers to a survey which found that up to 53% of EU businesses are in favour of a common EU **corporate tax** rate. Having said that, the survey revealed visible differences between the countries of origin of these businesses. Thus businesses from higher tax rate countries such as Italy (70%) or Spain (66%) are more supportive than businesses with more beneficial business tax regimes such as Ireland (6%), Estonia (10%) or the Netherlands (28%).

EESC publishes opinion on reverse charge mechanism – 31 May

The **European Economic and Social Committee (EESC)** has published its legally non-binding opinion on the **reverse charge mechanism** proposed by the Commission as an exceptional regime that Member States fulfilling a set of conditions can apply to their national VAT systems. EESC states, notably, that the reverse charge mechanism must not be allowed to harm the internal market and it must be temporary and properly assessed by the Commission; that particular attention should be paid on the proportionality principle, as the cost of compliance for SMEs related to introducing a reverse charge mechanism could be considerable; and that solutions adopted to combat **VAT fraud** should not impose excessive and disproportionate burdens on tax compliant businesses, particularly SMEs.

Panama Papers investigation: obstruction and lack of cooperation hinder progress – 7 June

The Greens-EFA Group of the European Parliament has published a new report on **"tax dodging"** to mark one year since the **Panama Papers.** The report claims that the work of the Parliament's PANA Committee has been seriously obstructed by certain Member States, that **Malta** has been associated with serious money-laundering and tax dodging practices whilst simultaneously holding the Council Presidency, and that involved stakeholders have not been cooperating in a satisfactory manner with the inquiry Committee.

CFE publishes position paper on CCCTB – 9 June

The **European Fiscal Council** (**CFE**) representing **tax advisors** has published its position paper on the **Common Consolidated Corporate Tax Base** (**CCCTB**). The paper states, in particular, that there is in fact no unanimous position within the CFE on the CCCTB as proposed by the Commission. Some of its members are opposed to both a 2CTB and a 3CTB. Those members who are supportive of a common tax base believe that this should focus on its original purpose: finding effective solutions to cross-border issues by reducing compliance burdens and legal uncertainty (e.g. transfer pricing, offset of losses incurred in other member states). The paper then focuses on providing more detailed and technical comments on specifics of the two CCCTB proposals.

"Ibec: EU CCCTB Would Hit Ireland Hard" – 9 June

According to Tax News, the business group Ibec has warned that **Ireland** might end up losing up to €4 billion in annual tax income as a result of the Commission's proposed **Common Consolidated Corporate Tax Base** (**CCCTB**). Ibec CEO **Danny McCoy** warns that the Irish corporate tax system remains a key driver of national prosperity, and CCCTB risks hindering its functioning.

MEP Questions & Answers

EU list of tax havens: 0% corporate tax rate regimes – 31 May

The Council has replied to a question asked by a **group of S&D MEPs** with regard to the EU list of **tax havens** and **zero tax rate** jurisdictions. In their question, the MEPs ask the Council whether a zero tax rate would not be enough for a jurisdiction to be classified on the upcoming list of non-cooperative jurisdictions. In its reply, the Council simply states that the fact of the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason for concluding that a jurisdiction does not meet other necessary requirements.

Electronic VAT – 1 June

The European Commission has replied to a question asked by the MEP **Esteban González Pons** (**EPP/SPA**) with regard to **e-VAT**. In his question, Mr. González Pons refers to the recent agreement to align the VAT treatment of physical and electronic publications. He asks the Commission whether the definition of a 'book' refers not only to the traditional physical support but also to other media, such as digital, electronic and audiovisual; whether the definition of a 'book' includes audio books, maps, drawing books and any bibliographic collections with educational and editorial content which are accessed via any device or medium, whether physical, digital, electronic or audiovisual; and whether the proposed amendments also affect the acquisition of book retail or download services provided via subscription models which allow a selection of content to be accessed and downloaded for a fee. In his reply, **Commissioner Moscovici** maintains that the intention is to allow Member States to apply reduced VAT rates to books, newspapers and periodicals independently of their format. However, Member States would not be obliged to apply reduced rates to books, newspapers or periodicals and could also restrict the application of reduced rates to certain books, newspapers or periodicals. According to the proposal, Member States would generally be authorised to apply a reduced rate to all books, newspapers and periodicals on all means of support, either physical or electronic, including audio books and supplies on the basis of subscription models. However, this would necessarily exclude music and video content, which would not be able to benefit from the reduced rate.

Double taxation in the EU – 2 June

The European Commission has replied to a question asked by the MEP **Miguel Viegas** (**GUE-NGL/POR**) with regard to **double taxation** in the EU. In his question, Mr. Viegas states that although mechanisms are already in place for double taxation dispute resolution, the Commission has decided to put forward a new proposal to strengthen the mechanisms and create a supranational mechanism for settling any tax disputes. He asks the Commission what objective data it used when assessing the importance of double taxation in the EU and the inadequacy of the mechanisms currently in place. In his reply, **Commissioner Moscovici** maintains that the objective data used is publicly accessible in the tax dispute resolution proposal's impact assessment. The size of the problem of double taxation in the EU has been assessed by reference to statistical data on the number of pending cases under the EU Arbitration Convention at the end of 2014. Regarding the shortcomings of the existing mechanisms, objective data on the duration, costs, lack of enforceability and non-conclusiveness of the procedures has been collected by the Commission since 2012 and published in the statistics on pending Mutual Agreement Procedures under the EU Arbitration Convention.

Events

- 28-29/06/2017, ***Tax Fairness Conference***, European Commission, Brussels. Source