ACCOUNTANCY EUROPE.

Policy update

# Tax Policy Update

10 – 21 July

## HIGHLIGHTS

- European Parliament: draft reports on C(C)CTB have been published – 13 July
- International: Google wins preliminary Court battle against France on €1 billion tax bill – 13 July
- Council: France and Germany discuss corporate tax base convergence – 19 July

## European Commission

### Commission adopts monthly infringements package – 14 July

The European Commission has adopted its monthly **infringements package**. As part of the package, the Commission announces that it has asked **France** to amend certain provisions on how it calculates **personal income tax**. Current rules state that taxpayers resident in France and earning part of their income in another Member State of the **European Economic Area (EEA)** cannot benefit from the same personal and family tax advantages as applied to income earned in France. The Commission argues, therefore, that France is in breach of the free movement of workers, the right of establishment and the free movement of capital. The French authorities have two months to react, or the Commission may refer it to the **Court of Justice of the EU (CJEU)**.

Also as part of the infringements package, the Commission argues that **Bulgaria**, **Cyprus** and **Portugal** have failed to adequately and timely transpose the provisions on the exchange of information on **tax rulings**. As with France, the three Member States have two months to respond or the Commission may take the case to the CJEU.

### Commission publishes report on Personal Income Taxation in Austria – 20 July

The European Commission has published a new report that considers the impact of Austria's 2016 **labour tax** reforms on the budget and labour market incentives. The 2016 reform package included an increase in the number of brackets in the personal income tax system from four to seven, an increase in the amounts of several allowances and tax credits, and an increased reimbursement of social security contributions for low-income earners. The report's results suggest a revenue loss of €4.8 billion in 2015, but at the same time the reforms have significantly decreased the implicit tax rate in all income deciles and slightly reduced the risk of poverty.

# European Parliament

## ECON hearing with Estonian Minister of Finance, discussions on taxing the digital economy – 11 July

The ECON Committee has held a public hearing with the **Estonian** Minister of Finance, **Toomas Tõniste**. During the hearing, the Minister re-iterated that taxation of the **digital economy** remains a priority for the Presidency. In his view, more weight should be given to the **virtual place of activity** on top of the physical one. The Minister was hinting that this issue could be tackled as part of the **Common Consolidated Corporate Tax Base (CCCTB)** framework.

## PANA hearing with EU Finance Ministers – 11 July

The PANA Committee has held a public hearing with the **Finance Ministers** of four Member States: **Wolfgang Schäuble** (Germany), **Paschal Donohoe** (Ireland), **Pier Carlo Padoan** (Italy) and **Jeroen Dijsselbloem** (the Netherlands). During the hearing, each of the Ministers explained their countries' stance on the **Panama Papers**, and presented what reforms and other measures have been undertaken so far to rectify the status quo. Dijsselbloem welcomed **public country by country reporting (CBCR)**, but on the Commission's recent proposal on **tax intermediaries** he emphasised that there has not yet been sufficient time to study the text in detail. Schäuble for his part stated that Germany supports the Commission's proposal on intermediaries, which forms a good basis for national measures that his government has already been considering. Finally, he reminded that the boundary between what is legal and what is illegal is often shady. The Irish Minister presented the country's national mandatory disclosure system, which is applicable to all taxpayers. The Minister believes that the regime – in place since 2011 – has contributed to recent increases in corporate tax yields. Finally, the MEP **Brian Hayes (EPP/IRL)** raised the question as to whether the proposal goes far enough in terms of automatic exchange of information, and in identifying 'aggressive tax planning' schemes. He singled out **accountants** as one of the main categories of intermediaries.

## European Parliament draft reports on C(C)CTB have been published – 13 July

Two separate European Parliament draft reports dealing with the **Common Consolidated Corporate Tax Base (CCCTB)** have been published, in line with the Commission's two-staged approach of dealing with 'consolidation' and the 'common' elements separately.

The **CCTB** report has been drafted by the MEP **Paul Tang (S&D/NLD)**. Of particular interest, this report aims to further strengthen the link between the CCTB and CCCTB proposals. The fear is that 'common' is adopted without 'consolidation', whilst in Mr. Tang's view the two should not be separated in order to ensure maximum effectiveness. For this purpose, he proposes to align the implementation dates of the two separate Directives by 2020 at the latest. Moreover, Mr. Tang expresses particular concern on the taxation of the **digital economy**, and maintains that businesses active in the EU without a physical establishment must be treated in the same way as businesses having a physical establishment. To this effect, he is proposing additional factors to define **digital presence** in the article on **permanent establishment** in another Member State. In terms of **threshold**, the Commission's proposed €750 million cap should be reduced to €40 million, and the threshold should be completely eradicated after five years. Finally, the rapporteur proposes the introduction of a **minimum effective corporate tax rate** in order to level the playing field between multinationals and SMEs. Finally, amendment 19 calls for "harmonization of **accounting** rules”. In terms of **next steps**, the Committee vote is currently scheduled for 4 December, whilst a Plenary vote should be expected for 11 December.

The CCCTB report, in turn, has been drafted by the MEP **Alain Lamassoure (EPP/FRA)**. His proposed amendments introduce greater flexibility in the application of the CCCTB provision in order to account for potential losses from the system to certain Member States, the **Brexit** context as well as prospective tax reforms in the **US**. Moreover and in line with Mr. Tang’s focus on the digital economy, Mr. Lamassoure introduces the concept of **digital presence** and proposes to capture the commercial value of **personal data**. With this regard, he proposes for the apportionment formula (currently consisting of labour, sales and assets) to also encompass a fourth factor - personal data collection and exploitation for commercial purposes. In terms of **next steps**, the Committee vote is currently scheduled for 4 December, whilst a Plena vote should be expected for 11 December.

As a reminder, for both reports it is the Member States who must adopt the Commission’s proposals by unanimity, whilst the European Parliament may only submit its non-binding opinion. Many especially smaller Member States are concerned by the impact that a full CCCTB could have on their national tax bases. Moreover, despite the MEPs’ demands for establishing a full CCCTB regime immediately, the Commission and the Estonian Presidency remain committed to advancing the file in two separate stages – agreement on ‘common’ first, and only then focus on ‘consolidation’.

## Council

### Latest Presidency compromise on VAT legislation – 7 July

The latest compromises prepared by the Estonian Presidency on two **VAT proposals** has been published, notably on the proposal for supplies of services and distance sales of goods. These compromise texts demonstrate the Estonian Presidency’s commitment for reaching major progress on VAT reform during its term. Additional VAT proposals are to be expected for autumn (notably, on further steps towards the definitive regime, revamping VAT rules for SMEs and reforming VAT rates), and the Presidency appears intent on not losing momentum on the proposals already on the table either.

### Irish Ministry of Finance is skeptical about the prospect of C(C)CTB – 12 July

The Times has reported (article only available to subscribers) on a briefing on the **Common Consolidated Corporate Tax Base (CCCTB)** provided by the Irish Ministry of Finance officials to the new Minister of Finance, **Paschal Donohoe**. The briefing states that there is “a lot of negativity” amongst Member States towards the CCCTB, and that “significant progress” on the two proposals is “unlikely”. The Finance Ministry is concerned about the potential impact of a CCCTB system on the country’s tax base. Major Member States such as **Germany** and **France** are committed to greater coordination of tax systems in the EU. However, given that all EU-level tax proposals – including the CCCTB proposals – must be adopted by unanimity, the views and feelings of smaller Member States cannot be ignored. Indeed, it remains to be seen whether the Irish Ministry’s statement on unlikely progress is not merely a self-fulfilling prophecy.

### Brexit starting to pose a threat to the FTT – 17 July

**Brexit** is reportedly taking its tolls on progress with the **Financial Transaction Tax (FTT)**, as notably **France** and **Germany** appear more hesitant to move forward as they attempt to lure London’s financial sector into the continent. Progress in the FTT negotiations has stalled and Minister level negotiations on the dossier have been postponed or cancelled on few occasions in the past months. Nevertheless, both the French and German Finance Ministers keep on re-iterating their support for a FTT.

### "France And Germany Discuss Tax Harmonization" – 19 July

As reported notably by Tax News, **France** and **Germany** have recently discussed the prospects for greater **corporate tax convergence** on a bi-lateral basis. Apparently, the countries will publish a joint "preliminary report" on corporate tax base convergence in September, followed by a final report in December. The move is probably aimed at maintaining momentum on the proposal to establish a **Common Consolidated Corporate Tax Base (CCCTB)** in the EU – a major reform which the two countries strongly support but some smaller Member States remain opposed to (see article above). It appears that France and Germany remain ready to take up reforms bi-laterally, if progress at the EU-level is blocked.

## Court of Justice of the EU – Rulings

### VAT exemptions of supplies of services closely linked to sport – 13 July

The Fourth Chamber of the Court of Justice of the EU (CJEU) has issued a ruling on **VAT exemptions** on services that are closely linked to **sport**. The case code is C-633/15. In its ruling, the Court notably establishes that a VAT exemption granted to non-profit organisations covered by public law that provide services closely linked to sport must also be available to other non-profit organisations than those covered by public law that are providing similar services.

## International

### "HMRC To Seize Profits From Aggressive Tax Planning Scheme" – 7 July

According to Tax News, UK's **HMRC** has ordered a number of individuals who have marketed an illegal **tax planning** arrangement involving **film finance** to repay their gains or face ten years in jail. According to the HMRC, the arrangement involved a number of dubious and fraudulent features such as faked invoices, accounting records and diary entries.

### "GOOGLE ESCAPES €1BN FRENCH TAX BILL" – 13 July

As reported notably by EU Observer, **Google** has won an interim victory in its court battle against **France** on the company's tax obligations. The Paris Administrative Court has ruled that France cannot ask Google to pay approximately €1,1 billion in unpaid taxes since its Irish subsidiary does not have a **permanent establishment** in the country. Instead, the Court reminded that Google's European headquarters, staff and servers are all located in Ireland. The French authorities, for their part, challenge Google's tax position on the basis that it paid minimal corporate tax in France despite deriving substantial revenues there. The Court's interpretation is, however, that the company does not have sufficient physical presence in France. Apparently, the tax exemption is based on a law dating back from 1928.

## OECD

### Mauritius and Cameroon commit to BEPS framework – 5/11 July

**Mauritius** and **Cameroon** have committed to international **tax cooperation** by signing up to a multilateral agreement under the **BEPS** framework. Both Mauritius and Cameroon signed up to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). The MLI enables jurisdictions to transpose results from the OECD BEPS project into their existing networks of bilateral tax treaties in a quick manner. With these two new signatories, the number of jurisdictions signing up for the MLI has grown to 70. The MLI was developed as part of the so-called **inclusive framework**, which aims to incorporate developing countries into the OECD BEPS project.

### OECD releases the draft contents of the 2017 update to the OECD Model Tax Convention – 11 July

The OECD is requesting for comments to specific parts of its draft contents of the 2017 update to the **OECD Model Tax Convention**. The deadline for providing comments is 10 August. Feedback is sought on the following:

- Changes to paragraph 13 of the Commentary on Article 4 related to the issue whether a house rented to an unrelated person can be considered to be a "permanent home available to" the landlord for purposes of the tie-breaker rule in Article 4(2) a)
- Changes to paragraphs 17 and 19 of, and the addition of new paragraph 19.1 to, the Commentary on Article 4. These changes are intended to clarify the meaning of "habitual abode" in the tie-breaker rule in Article 4(2) c)
- The addition of new paragraph 1.1 to the Commentary on Article 5. The paragraph indicates that registration for the purposes of a VAT or goods and services tax is, by itself, irrelevant for the purposes of the application and interpretation of the permanent establishment definition
- Deletion of the parenthetical reference "(other than a partnership)" from subparagraph 2 a) of Article 10, which is intended to ensure that the reduced rate of source taxation on dividends provided by that subparagraph is applicable in the case where new Article 1(2) would have the effect that a dividend paid to a transparent entity would be considered to be income of a resident of a Contracting State because it is taxed either in the hands of the entity or in the hands of the members of that entity. That deletion is accompanied by new paragraphs 11 and 11.1 of the Commentary on Article 10

### OECD releases further guidance for tax administrations and MNE Groups on CBCR – 18 July

The OECD has published additional updated guidance on the application of BEPS Action 13 covering **Country-by-Country Reporting (CBCR)** for tax administrations and multinationals. The additional guidance addresses two specific issues: how to treat an entity owned and/or operated by two or more unrelated multinational Groups, and whether aggregated or consolidated data for each jurisdiction should be reported in Table 1 of the CbC report.

# State Aid

## Commission confirms Irish air travel tax exemption for transit and transfer passengers did not constitute state aid – 14 July

The European Commission has concluded that **Ireland's tax exemption** for transfer and transit passengers from its **air travel tax** is not in breach of EU's **state aid** rules. The Commission states that the exemption did not selectively favour certain airlines, and is therefore in compliance with the relevant state aid provisions. The dispute concerned an **excise duty** which applied to airlines operating in Ireland. The tax had to be paid for each passenger flying from an airport located in the country. However, departures of passengers in transfer or transit were exempted from the tax. According to the Commission's conclusions, the exemption was in line with the underlying logic of the air travel tax, which was to tax journeys by air originating from Ireland.

## "Ireland, EU Still Working On Apple Settlement" – 18 July

According to Tax News, **Ireland** has announced that it will finalise the arrangements to recover suspected **state aid** tax income from **Apple** by the end of the year. Despite having launched a legal challenge against the Commission decision, Ireland is committed to recover the amount – estimated at about €13 billion – and to place it into an escrow fund whilst waiting for a final ruling.

# Other News

## company calls for public cBCR after Oxfam report reveals profit shifting – 13 July

According to the Tax Justice Network, RB (previously Reckitt Benckiser) has called for **public Country-by-Country Reporting (CBCR)** after a report by **Oxfam** appears to reveal the company's dubious profit shifting practices. RB published a statement in response to the Oxfam report, in which it expresses support for governments to "take the necessary steps" to introduce public CBCR "and to create a level playing field for all businesses irrespective of where they are headquartered".

## FT: "Europe has corporate tax reform in its sights" – 16 July

The Financial Times has made a call for EU-level action against companies' profit shifting (article only available to subscribers). The article doubts the effectiveness of unilateral national measures against international profit shifting practices, and expresses scepticism towards the OECD BEPS project as countries such as the **US** or **Luxembourg** have yet to fully commit to them. There is hope, in FT's view, in Franco-German cooperation to harmonise their tax bases (see article above) as well as in the Commission's efforts.