ACCOUNTANCY EUROPE.

Policy update

Tax

18 – 29 September

HIGHLIGHTS

- Council: Council WP discusses PCBCR with slim progress, Germany remains key – 20 September
- European Commission: Commission publishes Communication on taxing the digital economy – 21 September
- International: President Trump promises major tax cuts – 28 September
- OECD: Forum on Tax administration holds plenary meeting, discusses digitalisation and sharing economy – 27/29 September
- Council: digital tax agenda moves forward at Tallinn summit – 29 September

European Commission

Major VAT packages expected for the autumn – 19 September

The European Commission is driving its VAT reform agenda forward with full speed. On 4 October, it will publish the first step of its proposals to move towards a definitive regime and the destination principle. This will be accompanied by a proposal concerning the so-called certified taxable persons (CTPs). The second step is expected for 2018, and will lay down detailed technical provisions needed for the operation of the definitive VAT system. On 29 November, in turn, the Commission will publish proposals to reform the EU VAT rates system, to simplify VAT rules for SMEs, and to reinforce the existing instruments for administrative cooperation.

Commission publishes Communication on taxing the digital economy – 21 September

The Commission has published its awaited Communication on taxing the digital economy. The Communication presents the Commission's initial thinking on the matter, and lists several possible policy options – both long and short term, international and EU-specific – that it will consider. According to the Communication, the Commission "stands ready" to present a legislative proposal by spring 2018.

Of particular interest, the Commission emphasises the need for international solutions (e.g. revising transfer pricing rules, PE, profit attribution rules), but EU-specific initiatives and especially short-term fixes could be considered in parallel:

- CCCTB, in particular, provides an appropriate platform for a EU-level framework
- On international reforms, the Commission seeks to establish a common, coherent EU position
- As a reminder, the OECD will publish an interim report and proposals on the topic in April 2018, with a final report expected by 2020
- If progress is too slow internationally, the Commission maintains that EU-specific long-term solutions should be considered

In terms of next steps:

- 29 September 2017: Commission's Communication discussed at the Tallinn Digital Summit
- December 2017: member states to agree on a common approach for taxing the digital sector
- April 2018: OECD publishes interim report and recommendations
- Spring 2018: possible Commission proposal
- 2020: final report and recommendations from the OECD

Commission publishes VAT gap report – 27 September

The Commission has published its latest report on the VAT gap in the EU. According to the report, the total amount of VAT lost across the EU-27 in 2015 is estimated at EUR 151,5 billion. This represents a loss of 12% of the total expected VAT revenue. Member states' estimated VAT Gaps ranged from -1.4% in Sweden, to 37.18% in Romania. Overall, the VAT Gap decreased in the majority of member states, with the largest improvements noted in Malta, Romania and Spain. The gap increased in seven member states, namely Belgium, Denmark, Ireland, Greece, Luxembourg, Finland, and the UK.

European Parliament

PANA hearing with BASF, accountancy firms under the spotlight – 26 September

The PANA Committee has held a public hearing with the chemical company BASF. During the hearing, the accountancy profession and audit firms were singled out for their potential involvement in tax planning. Dr. Haas admitted that BASF uses mainly the Big Four whenever it engages in tax planning. He promised to inform the Committee members on which firms they use in which jurisdictions.

Moreover, Dr. Haas did not hesitate to openly advocate for cross-border tax planning if this is legal and results in lower tax obligations for multinationals. He emphasised that this is an obligation towards shareholders. He also argued against public CBCR as this might expose sensitive business information out into the public, and was concerned that CCCTB would hinder tax competition, which he sees in a positive light. On the one hand, tax competition enables smaller countries to develop, and on the other it forces larger countries to rationalise their tax laws and systems.

European Parliament publishes summary of its tax work – 26 September

The European Parliament has published a helpful summary of the tax work that it has engaged on in the past few years, as well as pending and new areas of involvement. It also provides an overview of Commission's relevant proposals, as well as the state of play of the various tax files.

Council

Irish finance minister on removing tax unanimity: dream on – 15 September

The Irish finance minister **Pascal Donohoe** has re-iterated that his government will not support any efforts to move away from unanimity on tax matters in EU decision making. He reacted to Commission President Juncker's calls for avoiding unanimity on tax dossiers, which he brought up during his annual State of the EU speech. He considers unanimity to be a key tool to defend Ireland's national interests, and argued that many other member states will agree with the Irish position.

Member States to assess FTT in the Brexit context – 16 September

The Austrian finance minister has announced that the 10 member states currently working on a prospective FTT have agreed to assess, together with the Commission, the possible impacts of a FTT in the Brexit context. The French government has, in particular, called for assessing the impacts of different Brexit scenarios before moving ahead with a FTT.

Council WP discusses PCBCR with slim progress, Germany remains key – 20 September

Member state attaches have held another technical meeting to discuss the public CBCR proposal currently on the table, but blocked by the reluctance of certain member states, led by Germany, to move ahead with it on the current legal basis.

Little if any concrete progress was made during the discussions. Some attaches questioned why the Estonian Presidency decided to hold a meeting at this particular moment, when a new German government is yet to be formed. It is widely believed that Germany holds the keys to unlocking the stalemate on the file.

The other main topics for discussion included the key elements contained in the European Parliament's position on public CBCR: global disaggregation of data, the safeguard clause, and the role of auditors.

On the safeguard clause, the battle lines remain consistent. Some of the more critical member states re-iterated their insistence that the Commission should have no role whatsoever on administering non-disclosure. Moreover, the Estonian Presidency criticised the lack of clarity on the criteria that would enable to omit certain information. Instead, the Estonians propose to extend the length of the mandatory delay period for publishing omitted data from one to two years. Denmark is, apparently, in favour of the European Parliament's proposal and against the

Presidency's, whilst Poland and Italy object to the MEPs' proposal. On global disaggregation, most member states remain sceptical. However, it appears that Italy, Denmark, Poland and the Netherlands are in favour.

Another meeting has already been scheduled for 11 October, although this may be another futile discussion given that there is unlikely to be a new German government by then.

Proposed VAT derogation to Romania published – 22 September

A new proposed VAT derogation for Romania has been published. The derogation would allow Romania to grant a VAT exemption to any taxable persons whose annual turnover is no higher than the equivalent in national currency of EUR 88,500. All member states need to agree with the derogation, although no major obstacles are foreseen.

Macron reveals his vision for the future of Europe, calls for more tax harmonization – 26 September

The French President **Emmanuel Macron** has held a major speech spelling out his vision for a reformed Europe.

In his speech, President Macron called for defining a corporate tax rate "tunnel" in the EU. This means, in all likelihood, the introduction of common minimum and maximum corporate tax rates in the EU. Moreover, he wishes for a EU-wide carbon tax, a revival of FTT negotiations, and taxing digital companies.

How far the Macron administration can push these reforms is difficult to say. On the one hand, France has been very successful in harnessing political momentum for digital taxation at the EU-level (see article below). On the other hand, the recent German elections leave **Angela Merkel** on wavier ground. Having to respond to domestic nationalist sentiments, it may be too much to ask from Merkel to fully join the EU tax harmonisation hype. And in parallel, smaller member states such as Ireland, Luxembourg and Cyprus will continue to criticise unilateral EU measures whilst holding on to their national sovereignty in tax.

digital tax agenda moves forward at Tallinn summit – 29 September

The Estonian Presidency has organised a Digital Summit in Tallinn during which the hot topic of the moment, taxation of the digital economy, was also discussed.

In the preliminary summit conclusions, the EU member states commit to "global change" of taxation rules, and in parallel adapting European tax systems to ensure that digitally-generated profits in the EU are taxed where value is created. This fairly generic wording appears to leave the door open for all the policy options currently on the table, ranging from sticking to an OECD-led process to the EU taking unilateral action.

Ahead of the summit, France, Germany, Spain and Italy published their objectives for the meeting, outlining notably in greater detail their thinking on digital taxation, as well as other areas of digitalisation.

It appears that after the summit, up to 19 member states are supporting the digital tax initiative driven by France. No details have been provided on which countries exactly, but on top of the four initiating ones at least Austria, Bulgaria, Greece, Portugal, Romania and Slovenia are in favour. On the opposite side lie Hungary, Denmark, Czech Republic, UK, Ireland, Luxembourg, Sweden and Cyprus. The Netherlands is, apparently, still hesitating on its approach. Belgium has also expressed sympathy for the initiative, but insists that further technical work is needed first. Thus, the rest of the alleged supporters' camp can be figured out by method of elimination.

Different Member state agendas – Ireland versus Austria

The divergence of views that exist between EU member states on the issue can be best summarised by the contrasting approaches between Ireland and Austria, for example. The divergence of views may hamper the relationships between EU member states.

Ireland has been, since the beginning, fundamentally opposing to any EU digital tax initiatives, insisting instead on the need for the EU to coordinate on the matter internationally with the OECD. Ireland fears, in particular, that a unilateral EU approach to taxing the digital economy could lead to double-taxation disputes and uncertainty for taxpayers. More recently, the Irish finance minister **Paschal Donohoe** insisted that his government will defend the unanimity rule on tax policy making at the EU level. According to the minister, this is a matter of national interest and sovereignty.

Austria, by contrast, is already preparing for its high-level tax agenda during its Council Presidency that takes place on the second half of 2018. The country's finance minister, **Hans Joerg Schelling**, recently stated that the EU should work on its own digital tax initiatives, in parallel with the OECD's work. According to the minister, he has discussed a prospective plan for the Austrian presidency with Commissioner Moscovici. The plan would include, notably, proposals for a virtual permanent establishment, as well as charging VAT on all mail order sales.

Finally, the Austrian minister also announced that his ministry now has a mandate to re-negotiate the Austrian – Irish DTA. The objective would be to introduce the concept of a digital permanent establishment into the agreement, so as to provide for the possibility to tax "digital profit" in Austria.

And what about the US?

Although the Estonian Presidency and the European Commission insist that the taxation of digital economy is a broader issue rooted in the structures of international tax principles, this may not be the view shared by the US. Indeed, the French government itself has been vocal in calling for taxing US digital giants that enjoy potentially privileged tax treatment in comparison to their European peers. This may further spark US fears that the digital tax campaign is nothing more than an effort by European countries to claim large sums of tax money that should, potentially, be taxed in the US instead.

Reportedly, the UK Chancellor **Philip Hammond** recently warned his EU colleagues not to anger Washington and provoke retaliation. The US is, for the time being, struggling with its own tax reform agenda (see article in the International-section), so it remains to be seen how far it is willing to go to raise the stakes against Europe.

Business associations warn against unilateral moves, civil society enthusiastic

Business Europe and AmCham EU have both warned against the EU opting for unilateral measures. Business Europe is particularly critical of the French turnover tax proposal, and calls for sticking to a global approach. AmCham, for its part, is more openly critical of any EU initiatives that go beyond international agreement, including the Commission's suggestion to use the CCCTB as a vehicle to develop the concept of digital presence.

Tax Justice Network (TJN), for its part, is spelling the end of the 'arm's length principle', stating that the Commission's recent choice of words seems to be hinting at transcending the basic principles of the existing international tax order. TJN interprets the Commission's wording as meaning the replacement of the arm's length principle with a unitary approach that recognises multinationals' profits at the group level.

Council WP on CCTB to discuss valuation of data for tax – 3 October

The Council Working Party on direct taxation is meeting on 3 October to discuss the Common Corporate Tax Base (CCTB). Of particular interest, the agenda includes a discussion on the valuation of data for tax purposes. The other item on the agenda is a discussion on Article 22 of the CCTB proposal covering long-term contracts.

Court of Justice of the EU – Rulings

C-552/15: Irish legislation on registration tax – 19 September

The Grand Chamber of the CJEU has ruled that a member state cannot oblige a taxpayer to pay the full amount of a vehicle registration tax applicable in the event of permanent registration, with disregard to the actual limited duration of the proposed use in Ireland of the vehicle imported there, and although the temporary duration of the lease or rental has been determined precisely and is known in advance. The Court views that this obligation risks rendering the lease or rental in such situations costlier than if it was concluded with a company established in Ireland.

C-215/16, C-216/16, C-220/16 and C-221/16: Taxation of energy products and electricity – 20 September

The First Chamber of the CJEU has ruled that member states may apply a levy on wind turbines designed to produce technology. Such a levy does not tax energy products or electricity, nor does it constitute a tax imposed on the consumption of energy products or electricity tax.

C-616/15: Exemption for services supplied to their members by independent groups of persons – 21 September

The Fourth Chamber of the CJEU has ruled that member may not restrict a VAT exemption to independent groups of persons (IGPs) whose members exercise a limited number of professions. The Court clarifies, in particular, that the VAT exemption to IGPs is not limited to the field of health and does not cover the financial sector.

C-605/15: Exemptions for certain activities in the public interest – 21 September

The Fourth Chamber of the CJEU has ruled that the exemption provided for activities undertaken in the public interest is only applicable to independent groups of persons (IGPs) whose members carry on an activity in the public interest as defined in the VAT Directive. By extension, services supplied by IGPs whose members carry on an economic activity in the area of insurance does not constitute such an activity in the public interest, and therefore are not entitled to the exemption.

C-441/16: Refund of VAT charged on imported goods – 21 September

The Tenth Chamber of the CJEU has ruled that a member state cannot refuse to refund the VAT paid on the importation of goods to a taxable person who is not established on its territory when, at the time of importation, the following conditions are met:

- the performance of the contract through which the taxable person purchased and imported those goods was suspended
- the transaction for which they were intended to be used was in the end not carried out
- the taxable person did not provide proof of their subsequent movements

C-326/15: Exemptions for certain activities in the public interest in financial services – 21 September

The Fourth Chamber of the CJEU has ruled that the exemption provided for activities undertaken in the public interest is only applicable to independent groups of persons (IGPs) whose members carry on an activity in the public interest as defined in the VAT Directive. Services supplied by a group whose members carry on an economic activity in the area of financial services are not entitled to that exemption, since it does not constitute an activity in the public interest.

International

President Trump promises major tax cuts – 28 September

President Trump and Congress Republicans have unveiled their tax reform plans. The plans would, notably, introduce almost $6 trillion in tax cuts by reducing levies for corporations, simplify tax brackets and nearly double the standard deduction used by most Americans. From the corporate tax perspective, the following are planned:

- reducing the corporate tax rate to 20% from the current 35%. Trump had initially expressed his preference for a 15% tax, but this has proven to be politically unattainable
- elimination of certain deductions, industry-specific incentives etc. There seems to be little details at this stage, but the plan calls overall for "streamlining" business tax breaks
- a one-time repatriation tax. This means that all overseas assets from US-owned companies would be considered repatriated and taxed at a one-time lower rate. The purpose is to bring corporate profits back from overseas. The plan does not include specific numbers, but reportedly officials have indicated that the rate could end up somewhere around 10%

OECD

OECD report: Legal tax liability, legal remittance responsibility and tax incidence – 18 September

The OECD has published a new paper that looks into the ways in which businesses act as withholding agents and remitters of tax on behalf of others. Reportedly, the share of tax revenue that businesses remit to governments outside of direct tax liabilities is under-studied, and the paper develops two measures of the contribution of businesses to the tax system and applies both these measures for 24 OECD countries.

The results appear to demonstrate that businesses play an important role in the tax system, both as taxpayers and as remitters of tax. The paper also highlights that the burden of a tax is not necessarily borne by the person on whom the tax is imposed under legal statute, but may be passed on to others in the economy, whether it be owners of capital, workers or consumers.

OECD invites public input on the tax challenges of digitalization – 22 September

In line with recent developments at the EU level, the OECD has opened a public consultation on the taxation challenges of the digital economy. The consultation invites comments on the impact of digitalisation on business models and value creation, challenges and opportunities for tax systems, the implementation of the measures outlined in the BEPS package and potential options to address the direct tax challenges of digitalisation. The deadline for commenting is short, as is usual for OECD consultations: 13 October.

CIAT: BEPS Actions 8-10 Most Important For Latin American & Caribbean States – 26 September

The Inter-American Center of Tax Administration (CIAT) has stated that that the BEPS recommendations covering transfer pricing, under Actions 8 through 10, are the most important ones from the perspective of Latin American and Caribbean countries. In turn, BEPS Actions 2 (hybrid mismatches), 3 (CFC rules), and 14 (dispute resolution) are of least relevance.

OECD releases first peer reviews on implementation of BEPS minimum standards on improving tax dispute resolution mechanisms – 26 September

the OECD has published the first six analyses of individual country efforts to improve dispute resolution mechanisms. These six peer review reports represent the first evaluation of how countries are implementing new minimum standards agreed as part of the OECD BEPS Project. They relate to implementation by Belgium, Canada, the Netherlands, Switzerland, the United Kingdom and the United States. A document addressing the implementation of best practices is also available on each jurisdiction. The six reports also include over 110 recommendations relating to the minimum standard.

Forum on Tax administration holds plenary meeting, discusses digitalisation and sharing economy – 27/29 September

The OECD Forum on Tax Administration (FTA) has held its plenary meeting in Oslo, Norway. As demonstrated by the Communique of the meeting, a wide range of tax-related areas were discussed.

In particular, the discussion focused on:

- priorities for the incoming G20 Presidency, in particular effective implementation of the BEPS outcomes, the Common Reporting Standard (CRS) for exchange of information on offshore accounts and actions to enhance tax certainty, including a new pilot on joint risk assessment of multinationals

- continuing efforts to improve tax compliance, including tackling the shadow economy and new challenges from the sharing economy. Discussions focused on the effective use of data, the management of tax debt and how to minimise identity fraud through effective registration and identification. The Plenary agreed to collective work on options for sharing of information on payments made by online intermediaries in the sharing economy

- the digital transformation of tax authorities through the use of new technologies, analytical tools and enhanced data sources. The Plenary agreed on the importance of collective work to realise the benefits for compliance, customer service and reduction of burdens, particularly for SMEs

New report on future role of audit, and more

Moreover, the following six new publications were released in the context of the FTA plenary meeting:

- Tax Administration 2017 (link)
- The Changing Tax Compliance Environment and the Role of Audit (link)
- Shining Light on the Shadow Economy: Opportunities and threats (link)
- Country-by-Country Reporting: Handbook on Effective Implementation (link)
- Country-by-Country Reporting: Handbook on Effective Tax Risk Assessment (link)

The report on the changing tax compliance environment and the role of audit is of particular interest. It sets out how tax compliance strategies are evolving in light of new technologies, data sources and tools, including the increasing use of advanced analytics. It also looks at how these changes might affect the role of audit and auditors in the future. Finally, the report suggests a number of areas where further work by the FTA might assist tax administrations in their consideration and implementation of administrative reforms as a result of the changing compliance environment.

Other News

Sam Mitha: Robots, technological change and taxation – 14 September

Sam Mitha, the former head of HMRC's Central Tax Policy Group, has written an insightful article about the impacts of technological change, AI and robotics to the tax system. He discusses the economics and rationale behind the increasing robotization of the economy. He also puts forward a number of options for governments to tax robots, and assesses the pros and cons of each of the different approaches.

EESC publishes position on C(C)CTB – 21 September

The European Economic and Social Committee (EESC) has published its non-binding opinion on the C(C)CTB. In its opinion, EESC emphasises that only with consolidation companies will feel the main benefits, welcomes addressing the debt-equity bias, and calls for:

- introducing IP into the apportionment formula, an equitable formula, and to avoid systematically unbalanced effect
- ensuring that the proposals on depreciation reflect the real experience of businesses as depreciation allowances may be too limited for certain asset classes subject to very rapid obsolescence due to the pace of technological change
- an equitable balance among member states as a result of the proposals, and to examine their impact in detail on a country-by-country basis in terms of investment attractiveness, job retention and creation
- for flexibility and ensure that states and companies are able to respond to changing global or domestic economic circumstances, while respecting EU procedures and joint cooperation

EESC's opinion is non-binding and does not commit the Commission or the member states to any particular course of action.

MEP Questions & Answers

The search for a more favourable fiscal framework and the exercise of fundamental rights and Community freedoms – 15 September

The European Commission has replied to a question asked by the MEP **Eleftherios Synadinos (Independent/Greece)** with regard to the right to look for favourable tax regimes.

In his question, Mr. Synadinos refers to a CJEU ruling, which found that a taxpayer looking for the most favourable tax regime does not constitute a breach of EU law. He therefore asks the Commission how its anti-tax avoidance agenda fits with the Court's ruling.

In his reply, **Commissioner Moscovici** emphasises that companies should not be allowed to exploit EU freedoms for artificial profit shifting. Companies that benefit from the Single Market and generate profits in the EU must pay tax where the economic activity takes place.

Events

- 04-05/10/2017, ***E-Taxation Conference 'SmartEST Taxation'***, Estonian Presidency, Tallinn. Source
- 05/10/217, ***Capacity building for environmental tax reform***, Committee of the Regions, Brussels. Source
- 12/10/2017, ***Future of VAT: Digitalisation is here!***, Accountancy Europe, Brussels. Source
- 21/11/2017, ***FairTax meets COFFERS: Joint Perspectives on Fair and Sustainable Taxation***, Umea University, Brussels. Source
- 23-24/11/2017, ***Annual Conference on European VAT Law 2017***, ERA, Brussels. Source