ACCOUNTANCY EUROPE.

Policy update

Tax

13 – 24 November

HIGHLIGHTS

- European Parliament: Plenary hearing on Paradise Papers, Moscovici calls for agreement on tax intermediaries proposal in spring – 14 November
- International: EU countries planning tax crackdown on digital companies in absence of international agreement – 20 November
- European Parliament: ECON Committee hearing with Commissioner Vestager – 21 November

European Commission

Commission launches education portal to teach young people about tax and tax fairness – 20 November

The Commission has published a new education portal (TAXEDU) for young people to teach them about tax issues and how taxes affect daily life. In its own words, the Commission hopes that TAXEDU will further stimulate the ongoing debate on fair taxation.

The portal includes multilingual e-learning tools, games, videos and educational material for teachers to use in schools. TAXEDU is a joint initiative of the European Commission and the European Parliament. It was devised in cooperation with EU tax authorities.

For example, the portal includes the TAXLANDIA interactive game where players have to manage public finances and make decisions about tax collection and expenditure. Tax decisions taken by the player will have economic, social, environmental and other consequences.

Commissioner Vestager: EU will tax digital companies if OECD fails – 21 November

Commissioner Vestager has joined his Commission colleagues in calling for a tax on digital companies in the EU.

In her speech delivered at a conference in Paris, the Commissioner declared that should the OECD fail to produce appropriate recommendations for the taxation of the digital economy by next spring, the EU would move ahead unilaterally.

The Commission is expected to publish a legislative proposal on taxing the digital economy on 28 March 2018. The OECD, in turn, will publish its report and possible policy recommendations on 19-20 April.

Commission launches European Semester Autumn Package, urges member states to tackle tax avoidance – 22 November

The Commission has published the European Semester Autumn Package. Of particular interest, this Package includes country-specific recommendations for fighting against tax avoidance.

In his speech on the Package, **Commissioner Moscovici** emphasised that the Paradise Papers have demonstrated the need to address "aggressive tax planning" with increasing resolve. Moreover, the Commission has renewed its calls on member states to shift the tax burden away from labour.

European Parliament

Plenary hearing on Paradise Papers, Moscovici calls for agreement on tax intermediaries proposal – 14 November

The European Parliament has held a first hearing on the Paradise Papers that unveiled couple of weeks ago.

During the hearing, MEPs from across the political spectrum consistently called for public CBCR as a necessary tool for improving the tax system's resilience against malpractices. Indeed, it is overall reasonable to expect that the Paradise Papers will give new impetus for the public CBCR file that is currently stalling in the Council due to uncertainty related to the file's legal base. The Estonian Presidency is attempting to push member states to find a preliminary agreement on PCBCR even in the absence of a German government.

On top of PCBCR, the MEPs highlighted the need for finalising the EU tax haven list (and for it to include EU member states as well), effective sanctions on tax havens, and getting rid of the unanimity and secrecy on tax in the Council. MEPs also acknowledged that many of the Paradise Papers' schemes appear to be formally legal. Thus they steered the discussion towards questions of tax fairness, ethics and inequalities.

Commissioner Moscovici answers the call

In his opening speech for the hearing, **Commissioner Moscovici** called on member states to agree on the tax intermediaries proposal within the next six months (i.e. during the Bulgarian Presidency).

Moreover, he referred to tax system abusers as "vampires" who are only afraid of the light of transparency, and therefore called for PCBCR as this would unveil "how tax advisors and accountants work". Moscovici also re-iterated his commitment to put forward proposals to move to qualified majority voting on tax by the next European Parliament term in 2019.

The Paradise Papers debate is in its baby shoes and the discussion can rapidly evolve into new directions. In particular, the role of the large accountancy firms is expected to receive more scrutiny in upcoming political discussions.

ECON Committee hearing with Commissioner Vestager, S&D MEP asks about splitting the tax and audit functions of firms – 21 November

Commissioner Vestager has attended a hearing of the ECON Committee to discuss latest developments in her (state aid) portfolio.

During the hearing, the MEP **Neena Gills (S&D/UK)** asked the Commissioner whether the Commission would legally separate the audit and tax advisory functions of accountancy firms. She referred to "more and more questions and louder calls" being made about the role of the audit sector, which in Ms. Gill's words is highly concentrated and prominently facilitates tax optimisation.

In her reply, Commissioner Vestager refers to the current tax intermediaries proposal but does not address the question about the audit sector and splitting the tax and audit functions. The Commission appears to believe that the current intermediaries proposal on the table will address concerns about the role of tax advisors broadly.

Court of Justice of the EU – Rulings

C-499/16: VAT on fresh pastries – 9 November

The Sixth Chamber of the CJEU has ruled that national legislation may apply a reduced VAT rate to fresh pastry goods and cakes solely on the basis of their 'best-before date' or 'use-by date'. However, the principle of fiscal neutrality must be upheld.

C-374/16 and C-375/16: Deduction of input tax – 15 November

The Fifth Chamber of the CJEU has ruled that national legislation cannot base the right to deduct input VAT to the condition that the address where the issuer of an invoice carries out its economic activity must be indicated on the invoice.

C-507/16: Tax deduction scheme in the Member State in which the right to deduct is exercised – 15 November

The Sixth Chamber of the CJEU has notably clarified the conditions under which a member state can prevent input VAT deductions for a taxable person established on its territory, when the input VAT due in that member state is in respect of services provided by taxable persons established in other member states and used to provide services in member states other than the member state in which that taxable person is established.

C-308/16: VAT exemption on the supply of buildings – 16 November

The Second Chamber of the CJEU has ruled that national legislation may not make the VAT exemption on the supply of buildings subject to the condition that the first occupation thereof arises in the context of a taxable transaction. However, national law can make that exemption subject to the condition, in the case of the 'upgrade' of an existing building, that the costs incurred have not exceeded 30% of the initial value thereof, but only if the concept of 'upgrade' is interpreted as meaning that the building concerned must have been subject to substantial modifications intended to modify the use or alter considerably the conditions of occupation.

C-251/16: Exemption of the supply of buildings, and of the land on which they stand – 22 November

The Fourth Chamber of the CJEU has notably ruled that the principle that abusive practices are prohibited must be interpreted as being capable of being applied directly in order to refuse to exempt from VAT sales of immovable goods, such as the sales at issue in the main proceedings.

C-246/16: Right to reduce the taxable amount in non-payment by another party to a contract – 23 November

The First Chamber of the CJEU has ruled that a Member State may not make the reduction of the VAT in the event of total or partial non-payment subject to the condition that insolvency proceedings have been unsuccessful when such proceedings may last longer than ten years.

C-292/16: Taxation and the transfer of assets – 23 November

The First Chamber of the CJEU has precluded national legislation which, where a resident company, in the course of a transfer of assets, transfers a non-resident permanent establishment to a company that is also non-resident, first, provides for the immediate taxation of the capital gains resulting from the transfer and, second, does not allow deferred collection of the tax.

International

Comparing the Senate and House draft tax bills, House adopts draft bill – 13/16 November

Financial Times has published a helpful overview of the main features of and differences between the draft tax proposals issued by Republicans in the US House of Representatives and the Senate. Of main interest:

- The House wishes to reduce the corporate tax rate to 20% in 2018, whilst the Senate would like the tax cut to be postponed until 2019
- The House would like to cap net interest deduction at 30% of earnings before interest, taxes, depreciation and amortisation. The Senate wants to cap it at the same rate but before interest and taxes
- The House bill introduces a 25% cap on pass-through tax rates and introduces limitations to carried interest. Senate Republicans, in turn, propose a 17.4% deduction for pass-through income
- On repatriation of income, the House proposes a 14% one-off tax for liquid assets and 7% for other assets. The Senate bill is more lenient, proposing the one-off repatriation tax at 10% for liquid assets and 5% for other assets
- Finally, both chambers are in favour of moving towards a territorial system, where multinational companies are taxed on profits where they are earned, rather than the US taxing their worldwide income

The tax reform already took its first leap forward, as the House adopted its draft bill on 16 November. The House will now have to seek a compromise with the Senate.

China Cuts Corporate Tax For Tech Firms – 14 November

From 2014, China has had a targeted pilot 15% reduced tax rate for certain tech firms in order to encourage their investment and expansion. Chinese authorities have now announced that the regime will expand to include all mainland firms. At least 50% of the applying firms' income must derive from a "technologically advanced" servicesfocused business and less than 35% of its income from outsourced activities. Moreover, at least 50% of a company's workforce must be educated to degree level.

Paradise Papers line up Big Four accountancies for criticism, Paradise Papers database launched, investigations continue – 15/17/20 November

The Big Four accountancy firms are increasingly singled out as main actors in devising the tax planning arrangements revealed in the Paradise Papers. Financial Times provides a comprehensive overview of what is known about the firms' involvement so far.

Furthermore, the International Consortium of Investigative Journalists (ICIJ) has added Paradise Papers related information into their public online database. The database provides an overview of the companies and other stakeholders that appear in the Paradise Papers documents. All Big Four also feature in the database.

EU countries planning tax crackdown on digital companies in absence of international agreement – 20 November

As OECD and EU-level discussions on how to tax the digital economy, several EU member states have undertaken or intend to undertake national measures to tax digital companies.

Italy is currently working on legislation that would impose a so-called "equalisation tax". Italian buyers of services such as advertising on Google or Facebook — "intangible digital products" — would have to withhold 6% of the value of the purchase and pay it instead to the Italian Treasury.

Germany and Spain have also committed to moving ahead with national measures, should there be no progress at EU-level. France already proposed couple of months ago a tax on digital sales. Finally, the UK government recently introduced an anti-tax avoidance package which includes a tax on royalties on UK sales. The British government also opened a consultation to gather stakeholder input for a UK position at international level discussions.

Overall, digital companies may face a tough dilemma whereby the have to choose whether they prefer to see unilateral progress at EU-level or face a myriad of different member state regimes. Either way, it looks like Europe's patience with the OECD's work is starting to run thin. The OECD is expected to publish its own findings and recommendations on taxing the digital economy on 19-20 April.

OECD

Qatar expands its capacity to fight international offshore tax avoidance and evasion – 10 November

Qatar has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, thus becoming the 115th jurisdiction to join the Convention.

The Convention provides all forms of administrative assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection. It guarantees extensive safeguards for the protection of taxpayers' rights.

The Global Forum on Tax Transparency intensifies the pressure on tax evaders worldwide – 17 November

In the aftermath of the Paradise Papers, 200 delegates from more than 90 delegations met in Yaoundé, Cameroon for the 10th meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes. The Global Forum now includes 147 countries and jurisdictions.

The Global Forum adopted the first report on the status of implementation of the AEOI Standard a few weeks after almost 50 countries started exchanges of information under the new standard on automatic exchange of information, with another 53 countries starting in September 2018. The principle of annual implementation reports and peer reviews were agreed at the meeting to ensure effective implementation and a level playing field.

For the occasion, the Global Forum published peer reviews of Curaçao, Denmark, India, Isle of Man, Italy and Jersey. The publications bring to 16 the number of second round reviews of the Forum's 147 member countries and jurisdictions. It is based on the Forum's international standard of transparency and exchange of financial account information on request.

On the sidelines of the Global Forum, a number of ministers and decision-makers from African countries committed to fighting tax evasion and artificial profit shifting with renewed determination and further transparency.

OECD approves the 2017 update to the OECD Model Tax Convention – 21 November

The OECD Council has approved the contents of the 2017 Update to the OECD Model Tax Convention.

The 2017 Update, which was previously approved by the OECD's Committee on Fiscal Affairs on 28 September 2017, will be incorporated in a revised version of the OECD Model that will be published in the next few months. The 2017 Update primarily comprises changes to the OECD Model that were developed through the OECD BEPS Project.

OECD publishes revenue statistics report: personal income taxes on the rise, as corporate income taxes fail to recover – 23 November

Personal income taxes are playing an increasingly significant role in the tax mix as revenues from social security contributions and consumption taxes fall, and corporate tax collections remain low, according to a new OECD report.

Revenue Statistics 2017 shows that, on average, OECD countries are becoming more reliant on personal income tax (PIT) revenues, with social security contributions (SSCs) and taxes on goods and services declining as a share of total tax revenue. The average share of PIT in total taxation increased from 24.1% in 2014 to 24.4% in 2015, while the respective shares of SSCs and taxes on goods and services (including VAT) fell slightly, according to the report. Corporate income taxes, which fell significantly during the financial crisis, have not recovered, remaining flat at around 8.9% of revenues.

Qatar, Saint Kitts and Nevis and Trinidad and Tobago join the Inclusive Framework on BEPS – 23 November

Qatar, Saint Kitts and Nevis and Trinidad and Tobago have joined the Inclusive Framework on BEPS, bringing to 108 the total number of countries and jurisdictions participating on an equal footing in the project.

Members of the Inclusive Framework have the opportunity to work together with other OECD and G20 countries on implementing the BEPS package consistently and on developing further standards to address remaining BEPS issues.

State Aid

Commission publishes non-confidential version of decision to open an in-depth investigation into UK tax scheme for multinationals – 16 November

The European Commission has published the non-confidential version of its decision to open an in-depth investigation into a UK CFC rule exemption.

The UK scheme exempts certain transactions by multinational groups from the application of the country's CFC. The Commission is currently investigating whether the scheme allows certain multinationals to pay less UK tax, in breach of EU State aid rules. The UK and interested third parties have an opportunity to submit comments. For further details on the Commission investigation, see Accountancy Europe's Tax Policy Update from 27 October.

Other News

Paradise Papers: The role of the accountants and firms – 8/13 November

With the Paradise Papers, the role of the accountancy profession and large firms has re-emerged in political discussions.

Accountancy Age has published a helpful overview of positions within the firms as well as the HMRC on the role of the profession and the legitimacy of tax planning and avoidance. Civil society, for its part, is highly critical of the role of the profession and the firms. Tax Justice Network has been particularly prominent in voicing this criticism. Moreover, a new study published in the Journal of World Business claims to have established a causal link between a multinational's use of the Big Fours' services and its appetite for offshore tax planning. The Big Four, for their part, appear to base their defence on the legality and legitimacy of their activities.

Paradise Papers reveal a turning tide on tax avoidance – 10 November

Merryn Somerset Webb from the Financial Times has written about the emerging and strengthening negative view that the society at large has on tax avoidance, on top of evasion.

She points to the complexity of tax legislation as one of the main sources for the formal legality of offshore tax structures, and emphasises that many of the arrangements revealed in the Paradise Papers have perfectly legitimate reasons behind them. However, societal patience for (legal) tax avoidance strategies is diminishing, and tax is increasingly perceived as a CSR question.

In conclusion, Ms. Webb calls for multinationals to stick to "legal and socially acceptable tax avoidance" as it is less harmful for reputation and still provides for great benefits.

Paradise Lost – The Beginning Of The End For Offshore Tax Havens? – 16 November

Danielle Reece-Greenhalgh argues in her Mondaq article that tax avoidance is becoming an increasingly delicate matter for tax advisors. As leaks are evidently becoming more frequent, taxpayers and their advisors must carefully assess the potential implications of their tax arrangements becoming public or otherwise known to the authorities.

Events

- 29/11/2017, ***Effects of Tax Avoidance and Tax Dodging on Developing Countries***, FES, Brussels. Source
- 05/12/2017, ***Building an EU Tax System***, ETAF, Brussels. Source
- 05/12/2017, ***Tax administration in the Digital Age – Challenges and Opportunities, Hessen EU Representation***, Brussels. Source on request