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Policy update

# Tax Policy Update

14 – 25 May

## HIGHLIGHTS

- CJEU: US cannot get involved in the Ireland Apple state aid dispute – 17 May
- International: UN will not wait for OECD action to tackle digital economy taxation – 21 May
- European Commission: new proposal for detailed technical measures for the definitive VAT regime – 25 May
- Council: ECOFIN discusses VAT, formally adopts tax intermediaries proposal, removes two jurisdictions from EU 'tax haven' list – 25 May

## European Commission

### Commission publishes May infringements package – 17 May

The European Commission has adopted its latest monthly infringements package.

This month on the menu for tax: the Commission calls on Hungary to put an end to its national alcohol tax exemption granted to certain fruity spirits – many of which, coincidentally, happen to be Hungarian products. The Commission maintains that the tax exemption is discriminatory towards foreign producers.

In other cases, the Commission requests Romania to align its vehicle registration taxes with EU law, and calls on Italy to align its rules regarding excise duty exemption for fuel used to navigate within EU waters.

### Commission proposes detailed technical measures for the operation of the definitive VAT system – 25 May

The European Commission has published its long-awaited technical measures for the functioning of an eventual definitive VAT system based on the destination principle. This follows the broader definitive regime related proposals that the Commission published in January this year.

According to the Commission, out of the 408 articles in the VAT Directive, around 200 will need to be adapted. The package of detailed technical measures includes, notably, the following:

- Definition of cross-border trade of goods as a single taxable supply
- Introduction of the necessary provisions to put in place an online OSS portal for all B2B EU traders

- Cutting red tape, for example reducing the number of administrative steps that need to be taken by businesses when selling to other companies in other member states. Specific reporting obligations linked to the transitional VAT regime will no longer be needed for trade in goods. Further invoicing regarding EU trade will be governed by the rules of the member state of the seller
- Clarification that it is the seller that should charge the VAT due on a sale of goods to a customer in another EU country, at the rate of the member state of destination. Only where the customer is a Certified Taxable Person (CTP) will the acquirer of the goods be liable for VAT

As always with direct and indirect files, all EU member states must agree on the proposal unanimously. The European Parliament, for its part, only submits its non-binding opinion.

In the meanwhile, Council negotiations on the definitive regime proposals are not progressing well, as a growing number of member states are expressing their misgivings. Certain member states are particularly mistrustful about the prospect of other member states' tax administrations collecting taxes on their behalf. Many are left wondering why the Commission went through the trouble of proposing the detailed technical measures now, when it is not even certain that the member states will agree to move ahead with the definitive regime at all.

## European Parliament

### TAX3 Committee hearing on harmful tax practices – 15 May

The TAX3 Committee has held a public hearing on the fight against harmful tax practices, focusing in particular on the tax regimes of third countries.

During the hearing, the MEPs and the panel experts alike emphasised that more transparency, and de-politicised and predictable methods are needed in the fight against harmful tax practices and non-cooperative tax jurisdictions.

MEPs also expressed their dissatisfaction to the EU Ombudsman on the Council's level of transparency, as well as its unwillingness to engage meaningfully with the European Parliament on taxation matters. To that extent, the Ombudsman announced the publication of a Special Report addressing this matter. For further information on the latest quarrels between the Parliament and the Council, please see Accountancy Europe's Tax Policy Update from 11 May.

During the second part of the hearing, MEPs and a panel of experts scrutinised the EU's tax haven blacklist established in December 2017. Some MEPs cited the rapid delisting of half of the initially blacklisted jurisdictions as an example of political pressure having infiltrated into what should be an impartial process. A number of MEPs also raised the need to build in sanctions into the blacklist mechanism.

TAX3 Committee's work will continue on 7 June with a hearing on taxation, AML, crypto currencies, digitalisation and the European Semester – a testament to the very broad mandate that the Committee has been blessed with. Further hearings will take place throughout the same month: on 21, 25 and 28 June.

### ECON hearing on VAT administrative cooperation – 16 May

The ECON Committee of the European Parliament has held a public hearing on the VAT administrative cooperation file – the same that EU finance ministers later discussed at their May ECOFIN meeting (see article below for details).

The European Parliament's work on the dossier is led by the rapporteur MEP **Roberts Zile (ECR/LAT)**, who published his draft report earlier in April. For further details on Mr. Zile's report, please see Accountancy Europe's Tax Policy Update from 27 April.

**Sander Loones (ECR/BEL)**, speaking on behalf of Mr. Zile who was not present at the hearing, noted that the rapporteur welcomes the Commission's proposal, although some changes are necessary. He believes in striking a balance between request and analysis of information, on the one hand, and data protection and privacy, on the other. He added that operating boundaries of Eurofisc needed to be addressed. References to relevant data protection provisions have been inserted. What is more, the rapporteur aimed at striking a balance between interests and responsibilities of the requesting and requested authorities. Finally, he called for a simplified mechanism on dealing outstanding liabilities.

**Olle Ludvigsson (S&D/SWE)** and **Molly Scott Cato (Greens-EFA/UK)** were expressed their reservations towards Mr. Zile's proposed deletion of the certified taxable person (CTP) concept. However, especially Mr. Ludvigsson remained optimistic that a compromise between the political groups can be found.

In terms of next steps, a Committee vote is scheduled for 19 June, whilst a Plenary vote is expected for 2 July. As a reminder, the European Parliament only retains consultative powers, whereas the Council makes the actual decision by unanimity.

## Council

### Council publishes additional tax reform commitment letters received from third countries – 22/23 May

The Council has published additional commitment letters received from third countries and containing political commitments on tax reforms. These latest published letters are from Botswana and Jamaica.

As a reminder, third countries are asked by the Council to commit themselves to reforming their tax systems in order to abide by international and EU standards. If they fail to commit, or to follow up on their commitments, the jurisdictions risk being added on the EU's blacklist of non-cooperative jurisdictions. The process is based on objective criteria, but many observers have questioned this and claim, instead, that the selection of countries is based on political considerations first and foremost.

### Bulgarian Presidency publishes roadmap outlining next steps for the digital tax files – 23 May

The Bulgarian Presidency has published a roadmap for advancing the work and negotiations on the Commission's digital tax proposals.

The Presidency assesses that by June there will have been a sufficient number of technical meetings between EU diplomats so as to advance for a first compromise text on the short-term proposal. The Presidency assesses that for the long-term proposal as well, the technical discussions will have finalised by June. However, on this file the Bulgarians emphasise the need to monitor discussions at the OECD and G20 levels, and to contribute to these discussions.

## ECOFIN discusses VAT, formally adopts tax intermediaries proposal, removes TWO JURISDICTIONS FROM EU 'TAX HAVEN' LIST – 25 May

At the May ECOFIN, the EU finance ministers once again dealt with a number of tax files, some of which have been in a stalemate for a long time already.

Against optimistic hopes and expectations, no agreement was reached in the end on any of the VAT files on the table. However, member states did formally adopt the tax intermediaries proposal (on which a political agreement was reached already in March), and removed two jurisdictions from the EU list of non-cooperative jurisdictions.

The Bulgarian Presidency filed three VAT files for discussion at this ECOFIN: the Commission proposal on improving VAT administrative cooperation, the proposal to allow for reduced VAT rates for e-publications, and the proposal on a general reverse charge mechanism (GRCM).

It was expected that a consensus would be found on the VAT administrative cooperation package. On e-publications and GRCM, things were less clear. As a reminder, France objects the introduction of a GRCM pilot system in the EU as it fears that it will undermine the unity of the EU VAT system. As a retaliation, Czech Republic is vetoing the e-publications proposal. The Czech government believes that the GRCM would be a crucial tool to address wide-spread carousel fraud in Central and Eastern Europe.

### No deal on VAT administrative cooperation

The Commission proposed a reform of VAT administrative cooperation on 30 November 2017. Please see the relevant Accountancy Europe's Tax Policy Update for further details on the proposal.

**Commissioner Moscovici** and the Bulgarian Presidency hoped that a political agreement would be reached on the proposal. The Bulgarian Presidency had introduced a number of compromises in the text in order to ensure consensual support for it.

A particular stumbling block had been to determine how many member states should ask another one to open an administrative inquiry. The Presidency proposed that the competent authorities of at least two member states would have to consider that an administrative inquiry is necessary. They should also present a common reasoned request "containing indications or evidence of risks of VAT evasion or fraud". If these conditions are met, the requested authority will only be able to refuse to undertake the inquiry on the grounds explicitly set out in the Regulation.

Moreover, the compromise text also provides the possibility for member states to provide relevant information to OLAF. However, if this information comes from another member state, its transfer to OLAF may require the prior agreement of that member state.

Speaking at the beginning of the ECOFIN, Commissioner Moscovici emphasised that the member states would agree on the text at a record time – barely over half a year since the initial proposal's publication. However, his optimism was faced with a cold shower from the French finance minister, who said that France would need more time to study and find an agreeable compromise to the proposal. Thus, blocked by a French veto, the item will return on the finance ministers' agenda probably in June.

### Stalemate remains on e-publications vs. general reverse charge

Less surprisingly, Czech Republic maintained its veto on the e-publications proposal after France and a number of other member states (including Greece, Slovenia and Cyprus amongst others) first blocked the GRCM.

On GRCM, France re-iterated its concerns that it would pose a threat to the unity and coherence of the EU VAT system. The French finance minister proposed that instead of a general reverse charge system, the scope of the sectoral reverse charge system could be expanded. This proposal was backed by Greece as well.

Czech Republic together with Romania, however, argued to the contrary. The Czech minister in particular insisted that the GRCM is crucial to her government, as the country needs it in order to fight against wide-spread carousel fraud in the region. Hence the country's veto of the e-publication proposal, which it knows to be close to the heart of the French. However, Czech Republic may be burning out its political capital fast, as a number of member states are losing their patience with the Czechs using an unrelated VAT dossier as hostage to its demands.

In the absence of any solution out of this impasse, the stalemate goes on.

### Other items: tax intermediaries, non-cooperative jurisdictions and tax good governance

More progress took place outside of the VAT realm. First, the member states formally approved the political compromise on the tax intermediaries Directive, which can now become EU law. The timeline for the Directive is as follows:

- Date of entry into force: 20 days from its appearance in the Official Journal (OJ), which will likely happen in mid-/late-June
- 31/12/2019: national transposition deadline
- 01/07/2020: date of application (any tax arrangement with first implementation step taking place between the proposal's publication in the OJ and this date is reportable)
- 31/08/2020: information must be filed to the relevant authority
- 31/10/2020: first automatic exchange between member states to take place

The member states also agreed to remove two jurisdictions – Bahamas and Saint Kitts & Nevis – from the EU list of non-cooperative jurisdictions. They were deemed to have made sufficiently satisfactory political commitments to reform their tax systems.

These jurisdictions will now be placed on the so-called grey list, where their delivery on their political reform commitments will be monitored and assessed. This means that seven jurisdictions now remain on the actual blacklist: American Samoa, Guam, Namibia, Palau, Samoa, Trinidad & Tobago and the US Virgin Islands. The grey list, for its part, now hosts 65 jurisdictions.

And finally, the Council approved a standard provision on good tax governance to be included in EU agreements with third countries. The finance ministers' conclusions emphasise the need to prevent cross-border tax fraud and tax evasion, as well as money laundering, corruption and the financing of terrorism.

The new provision reflects developments in international tax standards since a previous standard provision was agreed in 2008. These include OECD standards aimed at preventing BEPS.

## Court of Justice of the EU – Rulings

### C-12/18: US involvement in the Ireland Apple state aid dispute – 17 May

The CJEU has ruled that the US may not get involved in the ongoing Apple state aid case. The US sought to claim a stake in the case, given that its tax revenues could be impacted by the payment of EUR 13 billion by Apple to Ireland.

The Court's decision, however, is that the US has failed to demonstrate a clear interest in the case. Furthermore, the US did not demonstrate that Apple would otherwise repatriate the taxable profits back to the US.

### C-566/16: VAT special scheme for SMEs – 17 May

The Fifth Chamber of the CJEU has ruled that EU law does not preclude legislation which excludes a special VAT scheme providing for an exemption for small enterprises from being applied to a taxable person who fulfils all the material conditions, but did not exercise the right to opt for the application of that scheme at the same time as he declared the commencement of his economic activities to the tax authority.

## International

### UN publishes draft tax dispute resolution handbook and treaty negotiation manual – 16/22 May

As reported notably by MNE Tax, the UN Committee of Experts on International Cooperation in Tax Matters has released preliminary draft chapters for a new UN handbook on cross-border tax dispute resolution, as well as a manual presenting updates to UN manual for negotiating tax treaties. Links to all documents are available from the MNE Tax article. The final amended Model Double Taxation Convention is available here.

### Airbnb to report homeowners' income to Danish tax authorities – 18 May

Denmark will force Airbnb to automatically report homeowners' income to tax authorities. The measure is hoped to make it easier to spot tax evasion by homeowners renting out rooms and properties via the platform. It will still have to be approved by the Danish parliament, before becoming national law.

### UN WON'T WAIT FOR OECD ACTION TO TACKLE DIGITAL economy taxation – 21 May

The UN Committee of Experts on International Cooperation in Tax Matters will not wait for the OECD to reach final conclusions on the taxation of the digital economy before moving ahead with its own work in the area.

The Committee reasons that there is simply no need to wait, since its work on the taxation of the digital economy focuses on issues of interest to developing countries. The Committee also said that work already done by the OECD on the taxation of the digital economy could be useful to the UN subcommittee charged with developing the UN committee work. For example, the Committee believes that the description of new business models in the OECD's 16 March interim report could illustrate taxing right allocation issues, a topic of interest to developing countries too.

# OECD

## UAE joins Inclusive Framework – 16 May

The United Arab Emirates (UAE) has joined the OECD's Inclusive Framework, thus becoming the 116th jurisdiction to join it. At the same time, UAE also committed to implement all four anti-BEPS minimum standards.

The updated full list of Inclusive Framework members is available here.

## OECD releases decisions on 11 preferential regimes of BEPS Inclusive Framework Members – 17 May

The OECD Inclusive Framework has released updates to the results for preferential regime reviews conducted by the Forum on Harmful Tax Practices (FHTP) in connection to BEPS Action 5. The updates include the following:

- Four new regimes were designed to comply with FHTP standards, meeting all aspects of transparency, exchange of information, ring fencing and substantial activities and are found to be not harmful (Lithuania, Luxembourg, Singapore, Slovak Republic)
- Four regimes were abolished or amended to remove harmful features (Chile, Malaysia, Turkey and Uruguay)
- A further three regimes do not relate to geographically mobile income and/or are not concerned with business taxation, as such posing no BEPS Action 5 risks and have therefore been found to be out of scope (Kenya and two Viet Nam regimes)

In total, 11 new preferential regimes are identified since the last update, bringing the total to 175 regimes in over 50 jurisdictions considered by the FHTP since the creation of the Inclusive Framework. Of the 175, 31 regimes have been changed, 81 regimes require legislative changes which are in progress, 47 regimes have been determined to not pose a BEPS risk, 4 have harmful or potentially harmful features and 12 regimes are still under review.

## OECD publishes peer reviews on CBCR: strong progress for global roll-out – 23 May

The OECD has released the first peer reviews of the CBCR initiative. The OECD argues that they demonstrate strong progress toward the imminent implementation of the CBCR under BEPS Action 13.

According to the peer reviews, practically all countries that serve as headquarters to the large MNEs covered by the initiative have introduced new reporting obligations compliant with transparency requirements.

The analysis includes a comprehensive examination of 95 jurisdictions that are members of the Inclusive Framework. The results seem to indicate that 60 jurisdictions have already introduced legislation to impose a filing obligation on MNE Groups, thus covering almost all MNE Groups expected to be in scope. The remaining jurisdictions are working towards finalising their domestic legal framework with the support of the OECD.

Where legislation is in place, the implementation of CBCR has been found largely consistent with the Action 13 minimum standard. Some jurisdictions have received recommendations for improvement on certain specific aspects of their legislation and work has already begun to bring the provisions concerned in line with the standard.

## State Aid

### Ireland: Apple has made a first partial repayment of the State Aid – 18 May

According to the Irish minister of finance, **Pascal Donohoe**, Apple has submitted the first payment of the EUR 13 billion that the European Commission requested Ireland to collect from the company.

This first payment of EUR 1,5 billion was deposited to an escrow account, where it will be held until the ongoing court challenge by Apple and Ireland against the Commission has been concluded. According to Mr. Donohoe, additional payments will be made in the next few months and the full sum will be deposited in the account by the end of Q3 2018. Finally, the minister re-iterates his disagreement with the Commission's interpretation according to which Apple was granted EUR 13 billion in illegal state aid from Ireland in the form of preferential tax treatment.

## Other News

### EESC publishes VIEWS ON COMMISSION'S PROPOSED VAT rates reform – 23 May

The European Economic and Social Committee (EESC) has published additional views on the Commission's VAT reform packages, and most of all on the proposed VAT rates reform.

In its opinion, EESC re-iterates its concerns that a fragmented VAT system may pose obstacles for business – especially smaller ones. Furthermore, EESC:

- Calls on EU member states and the Commission to exempt from VAT such organisations and associations that provide assistance to disadvantaged people
- Agrees with the Commission's proposal to allow member states to use two reduced rates of a minimum of 5%, as well as one reduced rate lower than 5%, and considers that they should be applied to certain classes of goods and services. It also recommends that the member states continue to apply reduced rates to certain classes of goods and services of general interest
- Recommends that member states provide the institutions responsible for combating VAT fraud with the human, financial and logistical resources they need
- Believes that the Commission's objectives can only be achieved if the member states make the necessary efforts to adopt the definitive VAT system within a reasonable period of time

## Events

- 08/06/2018, ***Fair Taxation Seminar in Paris***, European Commission, Paris. Source
- 19/06/2018, ***Digital Day** – **Opportunities in innovation***, Accountancy Europe, Brussels. Source
- 19/09/2018, ***Fair Taxation Seminar in Rome***, European Commission, Rome. Source
- 09/10/2018, ***Fair Taxation Seminar in Dublin***, European Commission, Dublin. Source