ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

23 July – 3 August

HIGHLIGHTS

- G20 re-iterates commitment to digital tax, calls for a blacklist on tax transparency, looks at future tax priorities
- OECD, government officials and parliamentarians discuss developments in international tax co-operation
- UK will proceed with unilateral measures on digital taxation if there is no global solution

European Commission

Commission publishes report on methodologies for studying tax gaps – 20 July

The European Commission has published a report presenting different methodologies for studying countries' tax gaps, including through an extensive set of case studies.

Interestingly, the report observes that currently "about" ten EU member states have taken steps or already estimate a CIT gap with different scopes, techniques and periodicity.

The report concludes that it is too early to identify a consensus methodology, which could be used across countries and provide for overall and comparable tax gap estimations. However, by providing an overview of the state-of-the-art and highlighting the strengths and weaknesses of each method, the report is nevertheless a first step to in that direction, the report's authors conclude.

Council

Code of Conduct Group announces its priorities for the Austrian Presidency's term – 27 July

The Code of Conduct Group has published its work plan and priorities for the Austrian Presidency of the Council, which extends until December 2018.

For these next few months ahead, the Group intends to proceed with what looks like a very ambitious and far reaching agenda.

Indeed, it will notably continue to improve its transparency, and carry on with reviews of member states' tax measures with particular focus on notional interest deduction regimes. On the EU list of non-cooperative jurisdictions, the Group will aim to agree on draft guidance for coordinated defensive measures against listed jurisdictions, and adopt a draft amendment adding beneficial ownership transparency as one of the listing criteria. Finally, the Group will discuss its views on a possible reform of its mandate, intially established in 1997.

Court of Justice of the EU – Rulings

C-140/17: VAT deductions on immovable property – 25 July

The Second Chamber of CJEU has ruled that the VAT Directive and the principle of the neutrality of VAT must be interpreted as not precluding a body governed by public law from being entitled to a right to adjustment of VAT deductions paid on immovable property acquired as capital goods in a situation where, at the time of the acquisition of those goods, first, they could, by their very nature, be used both for taxable activities and for non-taxable activities but were initially used for non-taxable activities. And second, that public body had not expressly stated its intention to use those goods for a taxable activity but had also not excluded the possibility that they might be used for such a purpose, so long as it follows from an assessment of all the factual circumstances, which it is for the referring court to carry out, that the condition laid down by Article 168 of the VAT Directive, according to which the taxable person must have acted as a taxable person at the time when it made that acquisition, is satisfied.

International

G20 re-iterates commitment to digital tax, calls for a blacklist on tax transparency, looks at future tax priorities – 21/22 July

G20 finance ministers met in Buenos Aires to discuss common economic and financial priorities, including in the area of taxation, and made a number of political commitments in the post-summit communique.

Of particular interest on tax, the communique states the following:

- G20 remains "committed to work together to seek a consensus-based solution to address the impacts of the digitalisation of the economy on the international tax system by 2020"
- Support for the OECD BEPS project, and consideration of defensive measures against jurisdictions that fail to adequately introduce global standards on transparency. The OECD should produce such a list by the 28-29 June 2019 Leaders' Summit
- The OECD and the IMF should continue and report on their work on the tax certainty agenda
- Recognise the risks of cryptocurrencies for tax evasion and money laundering, and remain vigilant in this area

Ministers look at a menu of options for future tax priorities

The G20 finance ministers also discussed and endorsed a so-called menu of policy options for future areas of work.

On tax, the "menu" lists possible areas of work and measures to ensure "sustainable tax systems" for the future. Some of these include:

- Greater reliance on less distortive taxes and on taxes that have less mobile tax bases
- Consider tax base broadening and reducing differences in effective tax rates across different forms of investment, for the effective taxation of capital income
- Ensure tax neutrality between different forms of work
- Capitalise on new technologies to better identify and assess tax risks and simplify tax payers' compliance, while promoting formalisation

EU pushes for international progress on digital tax

At the summit, the EU and European countries were particularly vocal in emphasising and mobilising support for global progress to address taxation of the digital economy.

In the midst of the G20 summit, the French finance minister **Bruno Lemaire** emphasised that the countries are on the right tracks on digital taxation. He stated that a majority of EU countries would like to agree on common rules for digital taxation by the end of 2018 or beginning of 2019. A minority of EU member states would like to focus on OECD-level work. Mr. Lemaire claimed, however, that these two approaches are not necessarily mutually exclusive.

The Australian treasurer, **Scott Morrison**, applauded the G20 meeting for highlighting what "no one knows" – for example, how to measure the value of user data for social media service providers. The treasurer also highlighted that in the absence of a global agreement, more countries would proceed with unilateral interim measures to tax digital advertising.

OECD publishes three tax reports to inform G20 finance ministers

Ahead of the G20 conference, the OECD published three tax reports for the attention of the finance ministers.

The first report provides a comprehensive status update of the activities and achievements of the OECD's tax agenda, and is divided into two parts:

- The first part focuses on significant achievements so far and areas for further progress
  - On digital taxation, the report outlines the areas where the OECD and its member countries will need to focus, including revising transfer pricing rules, and a minimum tax approach with the consideration of user contribution
  - An interim report on digital taxation is to be published in June 2019, with a final report to be published in 2020. The OECD hopes that this final report will include a common position to solve long-term challenges
  - Work is already underway to better understand and address other technological aspects such as blockchains. The OECD's work includes considering the appropriate tax treatment of crypto-currencies, and recognising blockchain's potential for new and secure methods of record-keeping
- The second part is a progress report by the Global Forum on Transparency and Exchange of Information for Tax Purposes

The second report, prepared by the OECD's Inclusive Framework, provides an overview of the progress reached in the past year. The overview includes a status update on the Inclusive Framework's work streams, including digitalisation and transfer pricing guidance, as well as the monitoring and peer review processes.

The third report has been jointly drafted by the OECD and the IMF, and focuses on the tax certainty agenda. It includes examples of approaches to enhancing tax certainty, and discusses different initiatives to improve tax certainty in developing countries in particular.

UK will act alone against tech firm tax avoidance if global solution falters – 31 July

The UK's Treasury minister, Mel Stride, has announced that the UK could move ahead with unilateral measures to tax digitalised businesses if international discussions fail to reach an agreement on the matter. Even if it means stepping on the toes of the US.

Currently, discussions are ongoing in the OECD to find a global approach, whilst the European Commission proposed its own EU-specific measures earlier in March. The Commission has argued that EU-specific measures are necessary to protect the integrity of the Single Market, as otherwise EU member states would move ahead with unilateral national measures instead. The UK Treasury minister's statement appears to give credence to the Commission's fears.

OECD

OECD, government officials and parliamentarians discuss developments in international tax co-operation – 17/18 July

Over 70 participants from 20 countries in Europe and Central Asia gathered in Tbilisi, Georgia, for a high-level regional event on Developments in International Tax Co-operation: Fighting Tax Evasion and Avoidance.

The attendees included ministers of finance and taxes, heads of tax administrations, chairs of parliaments and parliamentary committees dealing with tax matters, governors of central banks and senior officials of ministries of finance and tax administrations from Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Estonia, FYROM, Georgia, Italy, Kazakhstan, Kyrgyz Republic, Lithuania, Montenegro, Romania, Serbia, Slovak Republic, Slovenia, Sweden, Tajikistan and Ukraine, as well as representatives of international organisations providing technical assistance, such as Asian Development Bank, the IMF and the World Bank.

Over two days, these participants discussed policy responses to fighting tax evasion and avoidance, as well as the opportunities and challenges presented by the practical implementation of international standards on tax transparency and BEPS.

Among priorities identified by the participating jurisdictions were tackling the informal sector and ensuring tax administrations have reliable information available to them by implementing the international tax standards, including automatic exchange of information. Delegates also discussed the implementation of measures to address BEPS, including those on harmful tax practices, treaty shopping, the use of CBCR information and improving dispute resolution, focusing on the specific issues faced by developing countries.

Ukraine signs Multilateral Convention to strengthen tax treaties – 23 July

Ukraine has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. It this became the 83rd jurisdiction to join the Convention, which now covers over 1,400 bilateral tax treaties.

The Convention is the first multilateral treaty of its kind, allowing jurisdictions to integrate results from the OECBEPS Project into their existing networks of bilateral tax treaties.

OECD invites taxpayer input on sixth batch of Dispute Resolution peer reviews (BEPS Action 14) – 26 July

The OECD is gathering stakeholder input for Stage 1 peer reviews of Argentina, Chile, Colombia, Croatia, India, Latvia, Lithuania and South Africa. The deadline for responding is 24 August 2018.

More specifically, the OECD invites taxpayers to submit input on particular issues relating to access to the Mutual Agreement Procedure (MAP), clarity and availability of MAP guidance and the timely implementation of MAP agreements for each of these jurisdictions. As taxpayers are the main users of the MAP, the OECD sees this input as key for the review process.

Antigua and Barbuda signs multilateral instrument against offshore tax evasion and avoidance – 27 July

Antigua and Barbuda has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. It thus became the 125th jurisdiction to join the Convention.

The Convention provides for 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 also guarantees extensive safeguards for the protection of taxpayers' rights.

MEP Questions & Answers

Legality of Shell tax ruling in light of state aid rules – 27 July

The European Commission has replied to a question asked by the MEP **Paul Tang (S&D/NLD)** with regard to tax rulings granted to Shell by the Dutch government.

In his question, Mr. Tang refers to a tax ruling given by the Dutch tax authority to Royal Dutch Shell, which had allowed it to divert Dutch dividend taxes worth EUR 7 billion through Jersey.

He asks the Commission whether this particular tax ruling is in line with the EU's competition laws, how the ruling compares to the tax state aid cases that the Commission has been running in the past few years, and whether the Commission intends to investigate the Shell ruling.

In her reply, **Commissioner Vestager** confirms that the Commission is aware of the case but cannot comment on this specific ruling. She emphasises that the Commission currently has three ongoing state aid investigations in Luxembourg, the Netherlands and the UK, and the Commission continues to look at more than 1 000 tax rulings. Ms. Vestager concludes by stating that more cases may come if there are indications that EU state aid rules are not being complied with, and these may also rely on information on potential aggressive tax planning rulings and schemes made public in the press.

Events

- 14/09/2018, ***Future of the Corporate Income Tax in the World: Is This the End of the CIT as We Know It?*** Estonian Ministry of Finance, Tallinn. Source N/A
- 17/09/2018, ***US tax reform conference***, AICPA & CIMA, London. 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