

Tax Policy Update

6 – 31 August

HIGHLIGHTS

- European Parliament draft report on cross-border conversions, mergers and divisions amends tax provisions
- European Parliament’s ECON Committee hearing on digital taxation gives glimpse into MEPs’ concerns
- European Commission confirms evaluation of Energy Tax Directive in its replies to MEP questions

European Parliament

European Parliament draft report on cross-border conversions, mergers and divisions amends tax provisions – 21 August

The MEP **Evelyn Regner (S&D/AUT)** has published her [draft report](#) on the Commission’s company law [proposal](#) covering cross-border conversions, mergers and divisions. The draft report’s publication is the first stage towards the European Parliament’s final position on the Commission proposal.

In her draft report, Ms. Regner has proposed amendments to certain tax provisions of the Commission’s text.

For example, the initial Commission proposal states that in the case of a cross-border merger or division, the **departure member state’s authorities should not authorise the measure** if it constitutes an “artificial arrangement aimed at obtaining undue tax advantages”. Ms. Regner has amended this **wording to “escaping the tax normally due on the profits generated”**.

Overall, it appears that the tax elements of the Commission proposal will become subject to significant amendments and discussion within the European Parliament. This is probably because the proposal is under company law and not tax, and it is thus an opportunity for the Parliament to push for its tax views in a legal text in which it has an equal say to that of the Council. Usually, the Parliament is merely consulted on tax proposals whilst member states decide by unanimity.

In terms of next steps, the JURI (legal affairs) Committee is expected to vote on the draft report on 19 October.

ECON HEARING ON DIGITAL TAXATION GIVES GLIMPSE INTO MEPS' CONCERNS – 29 August

ECON Committee has held a debate on the Commission's two digital tax proposals, in preparation of its draft opinion on the subject. The long-term proposal dossier is led by the MEP **Dariusz Rosati (EPP/POL)**, whilst **Paul Tang (S&D/NLD)** leads on the short-term digital services tax (DST).

At the hearing, both MEPs addressed the Commission to ask a number of questions and make observations.

Mr. Rosati, for example, asked the Commission whether its benchmarks for significant digital presence are fit for purpose and extensive enough. He fears, in particular, that certain smaller entities and smaller countries would fall out of scope. Mr. Rosati also maintains that the definition of digital services is rather vague and open for misunderstandings. And finally, that the provisions allegedly require a new agency to be established in each member state but also specific methodologies to verify to what degree these services are provided by digital companies.

Mr. Tang, for his part, asked about the distinctions between the digital tax proposals and CCCTB. On DST specifically, he was wondering whether the 3% tax rate could be even higher, and whether member states could be accorded the right to impose an even higher tax rate than a minimum level set at EU-level. Mr. Tang is also baffled that the selling of data is apparently not covered by DST's scope, and thus e.g. intra-company data transactions fall outside of its coverage.

In terms of other MEPs, **Ashley Fox (ECR/UK)** warned against harming innovative and digitalised businesses, and insisted that the Commission should not "usurp" member states' sovereignty in tax policy. For **Petr Jezek (ALDE/CZE)**, one of the main issues remains data protection, as companies would have to collect and transfer data on users' locations and activities. He wants the Commission to ensure that the provisions are in line with the General Data Protection Regulation (GDPR), which entered into force recently. Finally, **Ludek Niedermayer (EPP/CZE)** is worried that the digital tax provisions could lead to double taxation, and believes that the proposals should cover distance selling more broadly, not only digital business activities.

Valeska Gronert from the European Commission's DG TAXUD addressed some of the concerns expressed by the MEPs.

On thresholds, the Commission tried to find a balance in order to avoid disproportionate administrative burdens on companies. The key is to ensure that the companies subject to the tax can also afford to pay the tax. Moreover, the Commission had to take into account the international tax framework (VAT provisions, WTO rules etc.). Only a turnover tax – that the DST is – was feasible within these limits even if a tax on profits would be preferable. On the DST rate, 3% is a good balance as it is not too high for loss-making or low-profit companies. Finally, Ms. Gronert acknowledged that some businesses might pass DST on to other businesses or end-consumers, but this is "none of our concern" for now. The Commission simply wants to ensure a level playing field.

Although the European Parliament will submit its non-binding opinion on the files, the leading MEPs hope to influence and inspire the discussions between member states in the Council through their opinions.

International

Luxembourg Introduces New VAT Group Regime – 9 August

Luxembourg has [adopted](#) a new VAT grouping regime. It replaces a previous regime which was restricted to only entities engaged in activities in the public interest. Luxembourg's move aims to rectify 2017 rulings from the European Court of Justice (CJEU), which excluded financial and insurance companies from the scope of the “public interest” definition.

OECD

FYROM joins Inclusive Framework – 23 August

The Former Yugoslav Republic of Macedonia (FYROM) has [become](#) the 117th jurisdiction to join the Inclusive Framework on BEPS. The Inclusive Framework, established in January 2016, aims to bring interested non-G20 countries and jurisdictions, including developing economies, under the BEPS framework.

OECD releases fourth round of BEPS Action 14 peer review reports on improving tax dispute resolution mechanisms – 30 August

The OECD has [published](#) the fourth round of stage 1 peer review reports under BEPS Action 14. Each report assesses a country's efforts to implement the Action 14 minimum standard.

The now published reports are of Australia, Ireland, Israel, Japan, Malta, Mexico, New Zealand and Portugal. They contain over 130 targeted recommendations that will be followed up in stage 2 of the peer review process. A document addressing the implementation of best practices is also available for each jurisdiction that opted to have such best practices assessed. The peer review reports incorporate MAP statistics from 2016 and 2017.

Other News

AMAZON'S TAX IS NOT TRANSPARENT – but politicians let them get away with it – 6 August

In his [opinion piece](#) published in the Guardian, **Richard Murphy** accuses Amazon and politicians alike for the company's lack of transparency and dubious practices on tax.

In the article, Mr. Murphy analyses Amazon's corporate structure and activities in the UK, and makes assessments about the gap between the taxes that it paid, and taxes that it could or should have been liable to pay. One of the solutions to address the lack of transparency and status quo is public CBCR (NB Richard Murphy is considered by some to be the father of public CBCR). He argues that the “accountancy profession will hate it”, but insists that only “full accounting transparency” will bring about necessary tax outcomes.

Publishing tax strategies: meaningful or boilerplate? – 30 August

Large companies operating in the UK now have to publish a tax strategy, and there appears to be widespread compliance with this. **Maya Forstater** from the Center for Global Development reviews the different approaches large companies are taking in her [article](#) published in Tax Journal.

Ms. Forstater observes that most tax strategies are one or two pages long and there is a lot of common language. UK companies are vowing to ‘pay the right amount of tax, in the right place at the right time’ and not to undertake artificial transactions. Many companies also say that they include reputation in their tax risk frameworks.

The full article is only available to subscribers.

MEP Questions & Answers

Apple and capital allowances on intangible assets – 16 August

European Commission has replied to a question asked by the MEP **Matt Carthy (GUE-NGL/IRL)** with regard to Apple’s capital allowances on intangible assets.

In his [question](#), Mr. Carthy accuses Apple Ireland’s use of the Irish capital allowance regime for resulting in “significant” tax avoidance. He asks the Commission whether it believes that **Apple’s current tax arrangements** are compatible with Irish tax law.

In his [reply](#), **Commissioner Moscovici** points out that assessing compliance with national tax rules is a matter for national authorities. He, however, emphasizes that the Commission’s digital tax and CCCTB proposals would go a long way in tackling potentially abusive practices across the EU.

EU tax on raw materials and flight tax (Commission confirms evaluation of Energy Tax Directive) – 16/24 August

European Commission has replied to two MEP questions by confirming that it is currently undertaking an evaluation of the Energy Tax Directive (2003/96/EC) and may, as a result, propose changes to it.

In the [first](#) of the questions – on flight tax – the MEP **Auke Zijlstra (ENF/NLD)** refers to plans in the Netherlands to introduce a national flight tax in 2021 and asks the Commission about a potential EU flight tax. In the [second question](#), the MEP **Mirosław Piotrowski (ECR/POL)** asks the Commission whether it is planning legislative action around a EU tax on raw materials, one-off plastics and linear economy products and services.

In his reply to both questions (see [here](#) for the reply to the first and [here](#) for the second), **Commissioner Moscovici** confirms that the Commission is currently evaluating the Energy Tax Directive referred to above. As a result of this evaluation and if deemed appropriate, the Commission might propose a revision of the Directive, including possibly measures to introduce an energy tax on the aviation sector.

Gibraltar tax information – 17 August

European Commission has replied to a question asked by the MEP **Malte Pagazaurtundúa Ruiz (ALDE/SPA)** with regard to Gibraltar’s tax information.

In her [question](#), Ms. Pagazaurtundúa Ruiz argues that shortcomings persist in Gibraltar’s tax system, such as the absence of any provision for penalties in the law regulating associations or the lack of a systematic supervision of

associations' accounting obligations. She asks the Commission whether it plans to evaluate such potential shortcomings, and whether it will blacklist jurisdictions that comply only in name but not in substance.

In his [reply](#), **Commissioner Moscovici** insists that the Commission has not identified shortcomings in Gibraltar's compliance with the Accounting Directive or the Directive on Automatic Exchange of Information on tax. Finally, he points out that Gibraltar was not part of the EU's 2017 exercise to identify and blacklist jurisdictions on the basis of their tax regimes.

The applicable VAT tariff for mind sport – 20 August

The European Commission has replied to a question asked by the MEP **Esther de Lange (EPP/NLD)** with regard to VAT applicable to mind sport.

In her [question](#), Ms. de Lange refers to a ruling by the Court of Justice of the EU (CJEU) which forbade activities such as duplicate bridge from being **qualified as 'sport'**. The court apparently based its argument on the observation that sport requires some level of physical activity. She therefore asks the Commission whether it would establish a EU definition of 'sport' and include mind sport into this definition, and whether bridge and all mind sport will no longer be applicable for a 0% VAT rate.

In his [reply](#), **Commissioner Navracsics** (education, culture, youth and sport) states that the Commission usually refers to the definition of sport established by the Council of Europe, which includes the notion of physical activity. Even though the CJEU ruling in question excludes the application of 'sport' label on duplicate bridge, member states may still use the concept of **'cultural services' within the meaning of the VAT Directive** for it. He also maintains that the recently proposed VAT rates reform, once (and if) adopted, would grant member states the possibility of applying a reduced or zero rate to tournament or club membership fees for duplicate bridge.

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](#)
- 20/09/2018, *An Appraisal of the Proposed EU Digital Services Tax*, CEPS, Brussels. [Source](#)
- 09/10/2018, *Fair Taxation Seminar in Dublin*, European Commission, Dublin. [Source](#)
- 26/10/2018, *Beyond tax policy*, FEFP, Amsterdam. [Source](#)