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Policy update

Tax Policy Update

3 – 14 September

HIGHLIGHTS

- Commission President Juncker holds State of the EU speech, announces tax priorities for months to come
- Informal ECOFIN discusses digital tax, sunset clause proposed as a compromise, several countries give positive signals
- European Parliament progresses on a number of VAT files and holds a hearing on digital taxation

European Commission

Commission publishes notice to stakeholders on Brexit and VAT – 11 September

The European Commission has published a notice to stakeholders on the possible VAT repercussions of Brexit.

It covers a variety of sectors and aspects of VAT liabilities, and describes for each how a prospective Brexit will change the current situation. The covered areas include the treatment of supplies of goods and services, VAT returns through MOSS, and VAT refunds.

President Juncker holds State of the EU speech, announces tax priorities for months to come – 12 September

Commission President **Jean-Claude Juncker** has held his annual State of the Union (SOTEU) speech.

SOTEU presents the Commission's reflections on the current condition of the EU, and sets its priorities for the next months to come, leading up to the end of the current Commission's mandate in November 2019.

The speech is drafted in collaboration with all the relevant Commission DGs (or departments), and as such what is included (and what is not included) is of particular pertinence.

"UNITED, AS A UNION, EUROPE IS A FORCE TO BE RECKONED WITH"

This was the big message and take-away from the speech. Juncker gave the image of a Union that has gone through but also overcome great challenges, has a vision for the future, an economy that is recovering and is able to deliver and protect its citizens' wellbeing.

In terms of tax, this message translated into Juncker arguing that EU citizens expect that companies – including digital ones – pay their taxes where generated. Moreover, like with his last year's SOTEU, Juncker called for ending unanimity and moving to the qualified majority voting (QMV) on tax proposals. Follow-up measures to deliver on the latter are expected to be published in January-February 2019.

But even then, countries like Ireland are unlikely to give up their tax sovereignty cheaply. It remains to be seen whether the Commission will trade Ireland's support for tax reforms to the Commission's efforts to support Irish concerns in Brexit.

Commission Letter of intent elaborates on remaining priorities

In the context of the SOTEU, the Commission also published a Letter of Intent addressed to the European Parliament's President **Antonio Tajani (EPP/ITA)**, as well as the Austrian Presidency.

The letter gives an overview of which of the currently outstanding proposals the Commission will prioritise and aim to finalise during the last year of its term. On tax, the document outlines a rather ambitious, if not quite unrealistic, plans to have digital tax, CCCTB and VAT definitive regime proposals finalised by November 2019. Time will show whether this materialises, but one cannot be blamed for feeling somewhat sceptical about it.

European Parliament

ECON discusses VAT fraud report, preparing first step to a Parliament position – 3 September

ECON Committee of the European Parliament has held a first exchange of views on a draft report on the fight against VAT fraud, prepared by the MEP **Sirpa Pietikäinen (EPP/FIN)**.

Ms. Pietikäinen's report relates to the Commission proposal on the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud, and of the Quick Reaction Mechanism against VAT fraud.

At the hearing, it became apparent that the MEPs are on the same page with the Commission, and intend to give their endorsement without controversy. Indeed, **Peter Simon (S&D/GER)** explained at the hearing that since the proposal simply introduces a technical measure of prolongation and is considered not to have any negative implications for the EU budget, it should be supported.

As a next and final step, the European Parliament Plenary will vote on its endorsement in the first week of October.

ECON adopts its positions on VAT rates and definitive regime proposals – 3 September

ECON Committee has adopted two draft reports on VAT – one on the Commission's proposed VAT rates reform, and the other on the definitive regime. The former was approved with 39 votes in favour and 10 abstentions, whilst the latter passed by a margin of 44 votes in favour, four against and one abstention.

The report on VAT rates was drafted by the MEP **Tibor Szanyi (S&D/HUN)**, whilst **Jeppe Kofod (S&D/DEN)** is behind the definitive regime one.

In terms of next steps, the Parliament will adopt both reports as its formal position at a Plenary hearing on 3 October. As always on tax, the European Parliament is only consulted whilst the member states make a decision by unanimity.

TAX3 Committee holds hearing on taxation of the digital economy, Commission warming up to sunset clause – 10 September

The TAX3 Committee of the European Parliament has held a public hearing on the taxation of the digital economy. The hearing, which was initially supposed to be held jointly with ECON but ended up only involving TAX3, brought together speakers from the European Commission and the OECD to answer MEPs' questions on the matter.

Eduard Folch-Sogas from the Commission assured that the digital services tax (DST) would be temporary in nature. Commenting on the informal ECOFIN discussions (see article below), he stated that a sunset clause can be feasible if that is what it takes to find an agreement on the proposal. EU finance ministers gave themselves until the end of December to reassess the state of play and the progress made, Mr. Folch-Sogas emphasised.

Speaking about the long-term solution, in turn, Mr. Folc-Sogas emphasised that even if the digital permanent establishment is proposed as a stand-alone Directive, it could eventually be integrated into the scope of the CCCTB.

Eric Robert from the OECD, in turn, was optimistic about an OECD-level agreement being found by the current schedule – 2020. His optimism is sparked the US changing its stance, and being willing to discuss the matter and possible solutions. He re-iterated that the OECD does not see the merits of unilateral measures such as proposed by the Commission, but insisted that if DST is pursued, it should include a sunset clause. He did state, however, that a lot of non-EU countries have sympathy for the pressures that are pushing certain jurisdictions to take unilateral short-term measures.

Plenary adopts position on VAT scheme for SMEs – 11 September

The European Parliament Plenary has adopted its position on the proposed VAT scheme for SMEs, with an astonishing majority of 618 votes in favour, 40 against and 24 abstentions. The file was led by the MEP **Tom Vandenkendelaere (EPP/BEL)**.

In the report, the Parliament recommends that the special scheme be introduced already before a prospective future definitive regime is in place. Moreover, The MEPs are proposing that SMEs may continue to use their exemption for an extra two years rather than one year, as long as the turnover does not exceed the national threshold for SMEs by more than 33% during these two years, as opposed to 50% proposed by the Commission. And finally, the MEPs call for the establishment of an online VAT portal and simplified VAT declaration submissions.

However, as always on VAT the Parliament only submits its non-binding recommendations, with member states making the actual decision by unanimity.

Council

Informal ECOFIN discusses digital tax, sunset clause proposed as a compromise, several countries give positive signals – 8 September

EU finance ministers gathered together at an informal ECOFIN in Austria to discuss, amongst other things, the Commission's proposed digital services tax (DST).

Although some things remained unchanged – Ireland, Sweden and Denmark still opposed, Finland and Malta sceptical, Germany waiting to announce a formal stance – visible progress was apparent too. In particular, France proposed to include a sunset clause in order to emphasise the temporary nature of the DST.

As a result, notably Luxembourg, the Netherlands and the UK are warming up to the DST. Italy also supports such a clause, although its position has remained vague in a stark contrast to its earlier advocacy for the DST. The

Commission had earlier assessed that a sunset clause is legally unfeasible, but political realities may force them to find a solution nevertheless. Accountancy Europe also maintains that a sunset clause for the DST is an essential inclusion.

The Austrian Presidency aims for an agreement by December. With the finance ministers having now given political instructions, member states' tax attaches will take technical work forward in working party meetings taking place in the next few weeks and months. The next relevant working party meeting is currently scheduled for 25 September.

In the meantime, the number of member states either implementing or considering to implement national measures to tax digital business activities has increased to 11. Most recently, a report published by the French National Assembly's financial affais committee calls for France to proceed nationally with a diverted profits tax and a taxable digital nexus if EU-level action fails to materialise.

Court of Justice of the EU – Rulings

C-69: Refusal to a VAT deduction – 12 September

The Seventh Chamber of the CJEU has ruled that Articles 213, 214 and 273 of the VAT Directive preclude national legislation under which it is permissible for the tax authorities to refuse, on account of a failure to submit tax returns, a taxable person which has made acquisitions in the period during which its VAT identification number was revoked the right to deduct VAT on those acquisitions using VAT returns filed — or invoices issued — after the reactivation of its identification number, on the sole ground that those acquisitions took place in the period during which its VAT identification number was de-activated and where the substantive requirements have been satisfied and the right of deduction is not being invoked fraudulently or abusively.

International

Netherlands opens public consultation to reform Dutch tax ruling system – 30 August

The Dutch Government has opened a public consultation to inform its plans to reform the country's international tax ruling practices. Interested parties can submit their comments by 20 September.

The Dutch finance ministry plans, in particular, to reform the tax ruling practices in terms of content, process and transparency. These reforms come after years of tax scandals and accusations against the Netherlands for facilitating international aggressive tax planning.

Austria Says EU Financial Transaction Tax Is on Wrong Track – 5 September

The Austrian finance minister **Hartwig Loeger** has lamented that the financial transaction tax (FTT) negotiations are heading into the wrong direction and unless steered to a new course, will have to be abandoned altogether.

The minister is concerned, in particular, that the scope of the FTT has been reduced so much during the past seven years of negotiations between the 10 participating EU member states that it may no longer be worth the effort. He referred to a new Franco-German approach on FTT as a possible alternative avenue. This new approach was proposed by the two countries in June 2018, and would be based on the French model of mainly taxing transactions of domestically issued shares.

OECD

OECD: Tax reforms accelerating with push to lower corporate tax rates – 5 September

The OECD has published its Tax Policy Reforms 2018 report. According to the report's findings, countries have used recent tax reforms to lower taxes on businesses and individuals, with a view to boosting investment, consumption and labour market participation. This continues a trend that started a couple of years ago, the OECD writes.

The report describes the latest tax reforms across 35 OECD members, Argentina, Indonesia and South Africa. It identifies major tax policy trends and highlights that economic stimulus provided by fiscal policy, including to a large extent through tax policy, has become more significant.

Significant tax reform packages were introduced in Argentina, France, Latvia and the US, with a strong focus on supporting investment and some measures designed to enhance fairness. Other countries have introduced tax measures in a more piecemeal fashion.

Across countries, the report highlights the continuation of a trend toward corporate income tax rate cuts, which has been largely driven by significant reforms in a number of large countries with traditionally high corporate tax rates. The average corporate income tax rate across the OECD has dropped from 32.5% in 2000 to 23.9% in 2018. While the declining trend in the average OECD corporate tax rate has gained renewed momentum in recent years, corporate tax rate reductions are less pronounced than before the crisis, the report claims.

OECD releases seven new transfer pricing country profiles and an update of a previously-released profile – 7 September

The OECD has published new transfer pricing country profiles for Costa Rica, Greece, South Korea, Panama, Seychelles, South Africa and Turkey. In addition, it has also updated the information contained in Singapore's profile. The country profiles are now available for a total of 52 countries.

OECD releases further guidance for tax administrations and multinationals on CBCR – 13 September

The Inclusive Framework on BEPS has released additional interpretative guidance to give certainty to tax administrations and MNE Groups alike on the implementation of CBCR (BEPS Action 13).

The new guidance includes questions and answers on the treatment of dividends received and the number of employees to be reported in cases where a MNE uses proportional consolidation in preparing its consolidated financial statements, which apply prospectively. The updated guidance also clarifies that shortened amounts should not be used in completing Table 1 of a CBC report and contains a table that summarises existing interpretative guidance on the approach to be applied in cases of mergers, demergers and acquisitions.

State Aid

Commission publishes non-confidential version of the Engie Luxembourg decision – 4 September

The European Commission has published the non-confidential version of the final negative decision adopted on 20 June 2018 concluding that Luxembourg granted undue tax benefits to Engie of around €120 million.

The Commission found that tax rulings granted by Luxembourg had allowed two Engie group companies to avoid paying taxes on almost all their profits for about a decade. The Commission maintains that this is illegal under EU State aid rules because it gave Engie an undue advantage not available to other companies subject to the same national tax rules.

MEP Questions & Answers

Corporate tax system in Malta – 31 August

The European Commission has replied to a question asked by the MEP **Sven Giegold (Greens-EFA/GER)** with regard to the Maltese corporate tax system.

In his question, Mr. Giegold refers to a 2016 study on aggressive tax planning indicators, in which the European Commission committed to further analysing Malta's corporate tax system. He asks the Commission whether such further analysis has now been conducted, and whether this can be shared.

In his reply, **Commissioner Moscovici** states that since the 2016, the Commission has not conducted any further analysis on the topic. However, he states that as part of the 2018 European Semester, aggressive tax planning was discussed in the Malta country reports for 2016, 2017 and 2018 including by reference to the findings of the study in question. The Commission will follow up again on taxation and aggressive tax planning in the context of the 2019 European Semester cycle.

Formal investigation into Gibraltar's 2010 Income Tax Act – 13 September

The European Commission has replied to a question asked by the MEP **Enrique Calvet Chambon (ALDE/SPA)** with regard to the Commission's investigation into Gibraltar's 2010 income tax act.

In his question, Mr. Calvet Chambon asks the Commission whether the EU will have the capabilities to ensure Gibraltar's compliance with international tax standards post-Brexit.

In her reply, **Commissioner Vestager** emphasises that as part of the Brexit negotiations, the European Council is ensuring that the UK and its territories will not enjoy an unfair competitive advantage in key areas, including tax. Moreover, she points out that once the UK becomes a third country, it and Gibraltar will in any case be subject to the screening process for the EU list of non-cooperative jurisdictions in tax matters.

Eurofisc – 14 September

The European Commission has replied to a question asked by the MEP **Tom Vandenkendelaere (EPP/BEL)** with regard to Eurofisc.

In his question, Mr. Vandenkendelaere laments that member states' active participation in Eurofisc is purely voluntary, despite Eurofisc being an important anti-fraud tool. He asks the Commission whether it would be possible to provide data on which member states contribute the most and least, whether compulsory cooperation would contribute to a better functioning of Eurofisc, whether OLAF and other authorities should be allowed to participate in Eurofisc, and whether all of this would lead to better communication and information exchange between the organisations.

In his reply, **Commissioner Moscovici** refers to its June 2018 proposals to improve Eurofisc, and reminds that these proposals do not provide for data exchanges between Eurofisc, OLAF and others despite the Commission believing that issues such as VAT fraud requires a multidisciplinary approach. However, the measures did grant to give Eurofisc working field coordinators the power to exchange processed and analysed information with OLAF and Europol. This will result in Europol and OLAF receiving targeted and pre-analysed data and hopefully, will further promote this cooperation, Moscovici concludes.

Events

- 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