ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

1 – 12 October

HIGHLIGHTS

- European Parliament's TAX3 holds hearing with Council's Code of Conduct Group Chair, who confirms possible revision to expand tax haven screening to EU countries
- Commissioner Vestager discusses state aid tax agenda at ECON hearing
- ECOFIN sees major progress on several VAT files, makes changes to EU blacklist on tax
- Apparent progress in digital tax negotiations in sight, ahead of possible political agreement by end-2018

European Parliament

TAX3 holds further hearings on EU-Swiss relations, VAT fraud and the COUNCIL'S CODE OF CONDUCT GROUP – 1/10 October

The TAX3 Committee has held three additional public hearings in past weeks to advance its work ahead of the publication of its draft report in the next month.

Hearing on EU-Swiss relations on tax and AML

The first of the hearings focused on EU-Swiss relations on tax, with a speaker from the European Commission, a whistleblower and an AML expert.

During the hearing, the whistleblower **Rudolf Elmer** warned that the Swiss competent authorities, with whom the EU is to exchange information with, are not designed to function appropriately as part of the exchange of information. He also warned that although Switzerland was ending abusive special corporate tax regimes due to OECD pressure, it was introducing a number of equally harmful countermeasures.

Andreas Frank, the AML expert, highlighted that Switzerland remains the "mother of all tax havens" with a lax attitude towards offenders and a very harsh one towards whistleblowers. He advised the EU to take a tough stance against Switzerland. He suggested adding Switzerland to the EU's black list of non-cooperative jurisdictions.

Ludek Niedermayer (EPP/CZE) asked whether the Commission is pleased with the cooperation with the Swiss authorities. He also asked whether Switzerland cooperates more with the US. The Commission representative replied that it was too early to pass a judgement. **Jeppe Kofod (S&D/DEN)** asked the Commission to ensure that Switzerland would not break the spirit of the cooperation agreement with the EU. He also asked the panel of experts for their insights on how to better engage with Switzerland on whistleblower protection.

Hearing on the fight against VAT fraud

The second hearing focused on a study prepared by Professor **Marie Lamensch** on "VAT fraud: economic impact, challenges and policy issues".

The debate revolved around the different VAT collection methods, the new e-commerce package, the OSS, the Certified Taxable Person (CTP) system, the impact of new technologies, the cooperation between OLAF and EPPO, as well as administrative cooperation with third countries.

In her presentation, Professor Lamensch doubted the potential effectiveness of the EU's e-commerce reforms to effectively tackle undervaluation and VAT fraud. She argued that the reforms risk being open to new fraud, and merely introduced changes to VAT collection (such as putting greater responsibility on online platforms) due to customs authorities being overburdened.

On moving to a definitive regime, Professor Lamensch explained that this will effectively eliminate carousel fraud. However, it will open the door for new and simpler forms of VAT fraud. The OSS is a decentralised system of collection which requires member states to outsource their VAT collection, and to collect VAT on each others' behalf – something that will require a lot of mutual trust. She thus called for specific mechanisms to reinforce mutual trust. However, Professor Lamensch wondered whether the proposal is asking too much from the member states. She also warned that different member states will have different administrative capacities.

Professor Lamensch also highlighted that new technologies should be used more for data collection. With respect to CTP, she explained that it will be still possible for fraudsters to falsify documents.

Ludek Niedermayer (EPP/CZE) asked the Professor whether she agrees with abandoning the VAT system altogether and moving to a comprehensive reverse-charge mechanism instead. She replied that the fraction collection method remains the best option, despite the problems of the VAT system. Under a sales tax regime, there would be even greater risks of fraud.

Jeppe Kofod (S&D/DEN) asked whether the VAT 'quick fixes' will still be effective against fraud with the exclusion of the CTP element, which the member states decided to postpone. In her reply, Professor Lamensch underlined that the CTP was designed simply to reduce the amount of transactions flowing through the OSS. Fraudsters will simply do all they can to acquire a CTP status, and will carry on with their fraudulent activities.

HEARING WITH THE CHAIR OF THE COUNCIL'S CODE OF CONDUCT GROUP ON TAXATION

The third hearing hosted **Fabrizia Lapecorella**, Chair of the Council's Code of Conduct Group on Business Taxation. The debate focused on the working of the Group, the list of non-cooperative tax jurisdictions and whether the EU member states should be screened with stricter criteria.

In her opening remarks, Ms. Lapecorella defended the EU list of non-cooperative jurisdictions. She underlined that the list's purpose is not to name and shame, but to spark meaningful change in third countries. With this objective in mind, the listing process has been very successful, she emphasised. She also presented and applauded the Group's work on investigating, discussing and eradicating harmful tax regimes within the EU.

Several MEPs speaking afterwards criticised the Group's lack of transparency, and lamented that not enough has been done to address harmful tax practices within the EU. Moreover, a few MEPs criticised the Group's decision to abandon the zero rate as an stand-alone criterion for the list of non-cooperative jurisdictions.

Extending blacklisting to EU member states?

At the hearing, Ms. Lapecorella also stated that the Council under the Austrian Presidency is currently reviewing the Code of Conduct Group's mandate. As part of this review process, member states are also assessing the possibility of subjecting their own tax regimes to the same screening processes and criteria as applied on third countries.

European Parliament Plenary adopts final opinion on several VAT files – 3 October

The European Parliament has adopted its opinion on a number of key VAT files – sectoral reverse charge mechanism, VAT rates reform and VAT simplifications.

The adoption of these opinions by the European Parliament means that the member states can proceed to adopt the original proposals if they can find unanimous agreement (as they already have on some of these files – see article below plus previous Tax Policy Updates). On the substance of the proposals the Parliament has no say.

The first report on the period of application of the optional reverse charge mechanism and of the Quick Reaction Mechanism against VAT fraud. It was adopted with 615 votes in favour, 9 votes against and 43 abstentions. The file was led by the MEP **Sirpa Pietikäinen (EPP/FIN)**.

The second report on simplifying VAT rules, led by the MEP **Jeppe Kofod (S&D/DEN)**, was adopted **with 536 votes in favour, 19 votes against and 110 abstentions.** And finally, the third report on VAT rates reform was adopted by a margin of **536 votes in favour, 87 votes against and 41 abstentions. This one was led by the MEP Tibor Szanyi (S&D/HUN).**

The votes were preceded by a discussion between the MEPs. **Political Groups supporting the reform, as well as the European Commission, noted that the VAT measures introduce necessary flexibility for member states so that they can pursue their own political objectives, provides taxpayers with more legal clarity, closes certain loopholes in the current system, and lay the groundwork for a permanent definitive VAT system.**

ECON hearing on Fiscalis programme – 8 October

ECON Committee has held a first exchange of views on **Sven Giegold's (Greens-EFA/GER)** draft report on reforming the EU's Fiscalis programme.

During the hearing, Mr. Giegold welcomed the Commission proposal but called for more transparency into the Fiscalis programme. He also proposed for the Parliament to set its list of priority programmes in a separate Annex, and calls for prioritizing projects that increase state revenue, such as joint audits.

Andreas Schwab (EPP/GER) welcomed the draft report overall, but insisted that external experts should continue to be allowed to participate in the Fiscalis framework. **Pervenche Beres (S&D/FRA)**, for her part, presented the S&D Group's priorities for the file. The Group will propose further amendments on personal and corporate taxation, and called for including the digital services tax (DST) within the scope. And finally, **Ashley Fox (ECR/UK)** stated being against any priority lists, and called for the UK to be able to participate in Fiscalis even after Brexit.

ECON Committee is currently scheduled to vote on Mr. Giegold's draft report on 27 November. The review of the Fiscalis programme is one of the few tax-related areas where the European Parliament legislates on an equal footing with the Council.

See Accountancy Europe's Tax Policy Update from 28 September or further information on Mr. Giegold's report.

ECON hearing on digital taxation – 9 October

ECON Committee has held a first exchange of views on the digital tax draft reports prepared by the MEPs **Paul Tang (S&D/NLD)** and **Dariusz Rosati (EPP/POL)**. The former is responsible for the draft report on the digital services tax (DST), whilst the latter drafted the report on the long-term solution.

For more information on these two draft reports, see Accountancy Europe's Tax Policy Update from 28 September.

During the hearing, Mr. Tang provided an overview of the amendments that he is proposing to the Commission proposal on DST. EPP and ECR Groups of the European Parliament were cautious about the proposed increase of the DST from 3% to 5% and expanding the scope to audiovisual online service providers. They call for a detailed impact assessment of the possible impacts of such measures. Mr. Tang, however, emphasised that impact assessments are not an accurate science, and called for strong political will to move ahead.

Mr. Rosati's report, for its part, broadly agrees with the European Commission's proposal and suggests only a few changes. However, he notably urges the Commission to publish guidelines for national tax authorities on how to define 'significant digital presence' and 'digital services'. Moreover, he emphasised that the proposal should not discriminate between EU and non-EU businesses, and calls for SMEs to be excluded from its scope.

ECON is currently scheduled to vote on the two draft reports on 3 December. As usually on tax, the European Parliament only provides its non-binding opinion, whilst the actual decision is made unanimously between member states.

Commissioner Vestager elaborates on her tax priorities at ECON hearing – 9 October

ECON Committee has held an exchange of views with **Commissioner Vestager**, discussing amongst other competition related topics the Commission's use of state aid rules to tackle tax rulings granted by EU member states.

In her opening statement, the Commissioner highlighted the limitation of using state aid rules in the fight against tax avoidance, taking the recent Mc. Donald's case as an example (see Tax Policy Update from 28 September for further details on the case). In such circumstances, the approach works only if rules are broken, but in the Mc. Donald's case everything happened perfectly in line with the double-tax treaty between Luxembourg and the US, and the arrangement was open to other companies too. However, she promised that new cases will be opened if deemed necessary.

Pervenche Beres (S&D/FRA) asked the Commissioner what other tax-state aid investigations are in the pipeline, and whether the Commission is looking into favorable tax rules in Madeira. In her reply, the Commissioner stated that the Commission will "soon" conclude its work on analyzing EU member states' tax ruling practices, and might publish additional guidance on this. She also confirmed that the Commission is currently investigating Madeira's tax regime, and that an investigation into a Dutch ruling concerning Ikea is ongoing.

Paul Tang (S&D/NLD) stated that Shell and Unilever have lobbied for abolishing the dividend tax in the UK, and asks whether the Commission is looking into the matter. In response, Commission Vestager confirmed that the Commission is aware of the situation, and will assess whether there is a potential case.

The hearing with the Commissioner is part of a regular structured dialogue between the European Commission and the European Parliament.

European Parliament publishes draft report on generalised reverse charge mechanism – 10 October

The European Parliament has taken a first step to developing its position on the proposed generalised reverse charge mechanism (GRCM), with the publication of the draft report prepared by the MEP **Gabriel Mato (EPP/ITA)**.

In his draft report, Mr. Mato expands on the conditions that member states need to fulfil if they want to apply the GRCM. For example, he calls on such member states to ensure that the expected tax compliance and collection from a GRCM outweigh additional burdens on businesses and tax administrations, and that businesses and tax administrations will not incur costs that are higher than those incurred as a result of the application of other measures. Moreover, he argues that member states applying the GRCM should exchange relevant information with other member states in order to ensure that the VAT fraud is not simply being pushed elsewhere.

The Council has already approved its position on the GRCM proposal (see article in section below), and will have to wait for the European Parliament to adopt its final opinion before the proposal can become EU law.

Council

ECOFIN sees major progress on several VAT files, changes to EU blacklist on tax – 2 October

The October ECOFIN saw major progress in the area of VAT, with political agreements reached on the generalised reverse charge mechanism (GRCM), the e-publications proposal as well as the VAT quick fixes. Moreover, the member states also adopted new rules to enhance VAT administrative cooperation, and to expand the optional sectoral reverse charge mechanism and the so-called Quick Reaction Mechanism (QRM).

Two years old Franco-Czech stand-off resolved

In a major breakthrough that the Austrian Presidency can be proud of, France and Czechia resolved their disagreement on the GRCM versus e-publications stand-off. As a reminder, Czechia was upholding a veto on the non-controversial e-publications proposal in retaliation against the French vetoing the GRCM proposal. Both files were finally adopted at the October ECOFIN.

Whilst the e-publications file saw no major amendments from earlier compromise versions, the GRCM proposal has gone through some more recent amendments. Thus the final version of the proposal establishes that member states may use GRCM only for domestic supplies of goods and services above a threshold of €17,500 per transaction, only up until 30 June 2022, and under very strict technical conditions. For example, member states wishing to apply the GRCM must have 25% of their VAT gap resulting from carousel fraud. Moreover, these member states will have to establish appropriate and effective electronic reporting obligations on all taxable persons.

Four quick fixes approved

Moreover, the member states adopted the four VAT quick fixes, vetoed by France earlier this year.

In spring, France insisted that it will only accept the four quick fixes if a fifth quick fix consisting of a VAT exemption for independent groups of persons pooling services and sharing costs. France was supported notably by Latvia, Luxembourg, Italy, Austria and Ireland. However, the Commission vehemently opposed the fifth solution, insisting that it retains the monopoly over proposing new measures. It threatened to withdraw its proposal if a fifth solution would be introduced by the Council. This threat seems to have worked, as the opposing member states backed down. As a compromise, the Commission made a commitment to study the question of independent groups of persons and to legislate on it if deemed necessary.

It is also worth reminding that whilst the Commission linked the four quick fixes to the concept of a Certified Taxable Person (CTP), the member states decided to detach the two from each other.

Other VAT measures that went through

Whilst most of the attention rightfully went to the adoption of the three above-mentioned VAT proposals, it was easy for observers to miss the fact that two additional VAT measures were also adopted by the member states.

Indeed, the member states also approved uncontroversially and without discussion the proposal to prolong the application of the optional sectoral reverse charge mechanism and the QRM.

The second adopted but less hyped VAT proposal, despite its importance, is the proposal to strengthen administrative cooperation in order to better prevent VAT fraud. The Regulation aims to improve the exchange and analysis of information shared by the member states' tax administrations and with law enforcement bodies. It will also strengthen Eurofisc, a network of national tax officials for the exchange of information on VAT fraud, jointly processing and analysing all relevant data.

Changes to the list of non-cooperative jurisdictions approved

Outside the realm of VAT, the member states also approved further amendments to the EU list of non-cooperative jurisdictions.

Liechtenstein and Peru were removed from the grey list of non-cooperative jurisdictions, as they were deemed to have fulfilled their commitments for policy reforms. Palau, for its part, has made sufficient political commitments for reforms and was thus removed from the blacklist to the grey list.

Six jurisdictions remain on the list of non-cooperative jurisdictions: American Samoa, Guam, Namibia, Samoa, Trinidad and Tobago and the US Virgin Islands.

The most up-to-date grey list of jurisdictions is available here, whereas the blacklist can be consulted here.

DST negotiations advance – 5/10 October

EU member states have made some progress in past few weeks in the negotiations on the digital services tax (DST).

France, together with Austria and the Visegrad countries have re-iterated their commitment to reach an agreement by the end of the year. Spain, the UK and Italy, amongst others, are contemplating at introducing national digital tax measures. And Germany still sits on the fence, although its finance minister **Olaf Scholz** recently stated Germany's commitment to a "European solution" – although he apparently made no explicit reference to the DST.

Irish stance softening, Sweden still fights back, legal basis under scrutiny

More changes can be observed in other country positions, however. Ireland especially is apparently softening its stance, deeming it difficult to continue resisting under pressure from the larger DST-proponent countries.

The Irish Revenue earlier this year estimated that the country could lose around EUR 120-160 million should the DST be applied in the EU, with possible revenues estimated at EUR 45 million. The Irish government appears to be thinking twice whether such relatively small numbers are worth going against the will of its main EU partners.

It is also very likely that the EU's relentless support for a soft Irish border under any Brexit scenario does not come without a price for Ireland. Whether or not this price is merely Irish support for a DST, or something more fundamental (e.g. no vetoing the Commission's efforts to expand qualified majority voting into certain areas in tax) remains to be seen.

Either way, Ireland can count on Sweden to cause some head ache in its stead for the time being. Sweden is firmly against the introduction of the DST, and at the very least wants it to be strictly limited to advertising revenue only.

Additional supporting fire is coming from the Council's Legal Service, which has questioned the legal basis (indirect taxation) of the proposed DST. Claiming that the DST is a direct rather than an indirect tax may have far-reaching consequences, as this would mean that it is in a more explicit breach of member states' existing double tax treaties with third countries.

Apparently, the legal basis of the DST – as well as its potential non-compliance with double tax treaties – will be discussed at a technical meeting on 26 October.

Either way, many observers will find it difficult not to remember that the same Legal Service also provided Germany and a minority of other member states with much needed arguments to keep blocking public Country by Country Reporting (CBCR) in the Council.

What will happen next?

A few other issues remain. This includes the sunset clause, which was flaunted by France as a possibility at the last ministerial level meeting on the topic. Several hesitating member states have taken additional comfort from the sunset clause, Luxembourg amongst them.

The European Commission, however, has questioned the legality of a sunset clause which would not be limited in time but rather dependent on a future event occurring – i.e. that the DST would stop applying once EU or OECD level agreement on a digital permanent establishment has been achieved. Instead, the Commission seems to be pushing for a review clause, which would commit the member states to assess (e.g. after two years) whether or not they still wish to continue applying the DST. For Luxembourg, however, such a review clause – rather than a sunset clause – appears to be unacceptable.

The scope of the proposal is also still under scrutiny. It was already mentioned above that Sweden would like the scope to be limited to advertising revenue only. Finland, for its part, is uncomfortable with user value being included as a criterion. It remains to be seen whether these concerns can be accommodated in a final compromise.

In terms of next steps, the Austrian Presidency aims for a political agreement by the November ECOFIN but, failing that, at latest at the 4 December ECOFIN. Whether or not this is feasible appears to be a matter of politics rather than genuine technical problems – and thus all bets remain open.

Court of Justice of the EU – Rulings

C-416/17: Reimbursement of advance tax payments – 4 October

The Fifth Chamber of the CJEU has ruled that France has breached EU law by refusing to take into account, in order to calculate the reimbursement of the advance payment made by a resident company in respect of the distribution of dividends paid by a non-resident company via a non-resident subsidiary, the tax incurred by that second company on the profits underlying those dividends, even though the national mechanism for the avoidance of economic double taxation allows, in the case of a purely domestic chain of interests, the tax levied on the dividends distributed by a company at every level of that chain of interests to be offset.

International

UK eyeing data tax bill as US disengage – 10 October

The British Chancellor **Philip Hammond** has declared that the UK is considering its own tax on digital giants. This prospective UK digital tax would be based on the data generated by British users of online content, and claimed from the digital companies' globally reported profits. According to the Chancellor, the UK no longer hesitates to proceed unilaterally, now that the US has demonstrated its unwillingness to cooperate on taxation due to its own unilateral tax reforms, introduced last year.

Swiss Parliament adopts tax reform proposals, next step a referendum? – 9 October

The Swiss Parliament has adopted the so-called Tax Proposal 17, a tax reform aimed at making Switzerland compliant with international tax standards.

However, Tax Proposal 17's final adoption remains unsure, as it may yet be subject to a referendum. Such a public vote could potentially take place in May 2019. If passed, the reform would enter into force in 2020.

What's in the tax reform proposal?

Amongst other elements, Tax Proposal 17 would repeal the cantonal tax regimes. Transition rules are introduced for companies that benefit from the existing regimes, thus providing companies the possibility of releasing existing hidden reserves (including goodwill) in a tax-privileged way.

Moreover, the cantons must introduce a mandatory patent box with a 90% exemption on qualifying income (determined on the basis of the modified nexus approach), whereby software is excluded, and a 150% super deduction is provided for R&D costs incurred in Switzerland, based on R&D salary costs plus a mark-up.

Cantons may also introduce an optional notional interest deduction. The reform states that the cantonal relief limitation should not exceed 70%.

OECD

Global Forum publishes additional compliance ratings on tax transparency – 15 October

The Global Forum on Transparency and Exchange of Information for Tax Purposes has published seven peer review reports assessing compliance with the international standard on transparency and exchange of information on request (EOIR).

The reports assess jurisdictions against the updated standard which incorporates beneficial ownership information of all relevant legal entities and arrangements, in line with the definition used by the Financial Action Task Force (FATF) Recommendations.

The Global Forum found that two jurisdictions – Bahrain and Singapore – are "Compliant". Five others – Austria, Aruba, Brazil, Saint Kitts and Nevis and the United Kingdom were rated "Largely Compliant".

State Aid

Commission approves extension of Danish tonnage tax scheme to new types of vessels – 12 October

The European Commission has approved under EU State aid rules the extension of the existing Danish tonnage tax scheme to additional types of vessels. The measure encourages ship registration in Europe and contribute to the global competitiveness of the sector without unduly distorting competition, the Commission assesses.

At the same time, the Commission expects that Denmark will amend its existing scheme to ensure that it applies only to genuine maritime shipping activities by limiting revenues from non-core activities to an acceptable level.

Other News

ICRICT calls for a swift conclusion of CCCTB, including a digital dimension – 1 October

The Independent Commission for the Reform of International Corporate Taxation (ICRICT) has published a letter addressed to the Commission President **Jean-Claude Juncker**. In the letter, ICRICT calls for the introduction of a EU-wide CCCTB, as it sees this as the best measure to address tax avoidance through transfer pricing abuse.

ICRICT also maintains that the long-term proposal on a digital permanent establishment, introduced into the CCCTB, is a more effective tool in addressing the digitalisation of the economy than a prospective digital services tax (DST) is.

The letter is signed by a group of prominent economists and influencers that are all members of ICRICT, including **Joseph Stiglitz**, **Thomas Piketty** and the MEP **Eva Joly (Greens-EFA/FRA)**.

Greens Group calls for improvements to automatic exchange of information – 15 October

The Greens-EFA Group of the European Parliament has published a new report which argues that despite progress in recent years on closing down opportunities for tax evasion, there remain significant loopholes for citizens and multinationals to evade paying taxes where they are based.

The report highlights how EU citizens can continue to use tax havens through avoiding the automatic exchange of financial information by setting up bank and other financial accounts in countries not applying OECD standards effectively, or by holding accounts in the US through a legal entity. Wealthy individuals can also easily circumvent EU tax rules through "Golden Visa" schemes which allow people to buy residency or citizenship in another country, the report argues.

Events

- 26/10/2018, ***Beyond tax policy***, FEFP, Amsterdam. Source
- 20/11/2018, ***Will digitalisation make taxation easier?*** ETAF, Brussels. Source