Policy update

Tax Policy Update

12 – 23 NOvember

HIGHLIGHTS

- European Parliament TAX3 Committee publishes draft report
- German position on digital tax remains vague
- Council's Code of Conduct Group outlines next steps for tax haven list

European Commission

Latest VAT guidelines published – 15 November

The European Commission has published the latest version of its VAT guidelines. The new version includes feedback received from a meeting of the Commission's VAT Committee on 13 April.

The guidelines are non-binding, and do not constitute an official position of the Commission or an interpretation of the courts.

European Parliament

TAX3 Committee publishes its draft report – 19 November

TAX3 Committee of the European Parliament has published its draft report, which is the result of months of investigations conducted by the Committee on tax avoidance, financial crime, VAT fraud, golden visa and preferential tax regimes, and more. The report has been prepared by the MEPs **Ludek Niedermayer (EPP/CZE)** and **Jeppe Kofod (S&D/DEN)**.

The report puts forward a set of recommendations to the European Commission to address loopholes and weaknesses in the tax system as revealed by Paradise and Panama Papers and other recent scandals. On the accountancy profession, the report argues that there is a risk of conflicts of interest in audit firms that provide both tax and auditing firms. It therefore calls for a "transparent indication" of what services are provided to which clients by an audit firm, and a separation between these services.

As a reminder, the European Commission is preparing the ground for audit legislation evaluation, due to begin in 2019. In parallel, the European Parliament's ECON Committee has commissioned a study on audit market trends, concentration and the multidisciplinary business model, due to be published around March-April 2019.

In terms of other recommendations, the report calls for common definitions for aggressive tax planning, permanent establishment and economic activity criteria in order to ensure that companies do not have an artificial taxable presence in a EU member states. Moreover, the draft report calls for the adoption of the C(C)CTB and digital taxation proposals, and EU member states' tax systems to be evaluated as part of the European Semester.

In terms of next steps, the deadline for amendments is 17 December. A vote in TAX3 Committee is currently scheduled for 27 February 2019, whilst a Plenary vote should take place in March-April.

The report's recommendations are legally non-binding, but previous similar tax Committees of the Parliament have been successful in inspiring and driving the EU's tax agenda, and accumulating political pressure on the Commission and the member states to take action.

ECON discusses digital taxation ahead of an imminent vote – 19 November

The ECON Committee has held a debate on the amendments proposed to the draft reports on digital taxation, in preparation of a vote on its position on the Commission's digital tax proposals. The Committee's work on the long-term proposal is led by the MEP **Dariusz Rosati (EPP/POL)**, whilst **Paul Tang (S&D/NLD)** is in charge of the digital services tax (DST) report.

During the hearing, it became apparent that there is no strong consensus in the room. On DST, Mr. Tang wants to increase the tax rate to 5%, and to include in its scope the provision of video, audio or text content using a digital interface as well as the sale of goods or services contracted online via e-commerce platforms.

However, these proposals are increasingly questioned by EPP, who wants to keep the Parliament opinion "realistic" in order to better influence member states in the Council. Moreover, EPP calls for impact assessments on the proposed changes – something that Mr. Tang rejects out of fear that it would block the policy making process.

Interestingly, **Alain Lamassoure (EPP/FRA)** appeared to break rank with the rest of the EPP, claiming that since the DST is expected to yield merely EUR 5 billion, its potential economic impact would be minimal. Moreover, he argued that anyone insisting for the OECD to move first on the matter is are against such a tax altogether.

The liberal ALDE Group wants to maintain the threshold to companies with a EUR 750 million turnover and the tax rate at 3%. The Greens support a 5% rate, but prefer a threshold of EUR 50 million.

It remains to be seen what kind of compromises emerge from this cacophony of different positions. Either way, we will find out soon enough as both reports are to be voted on in ECON Committee on 3 December, followed by a final Plenary vote on 12 December. MEPs aim for a swift conclusion in order to add pressure on Council's work.

ECON discusses detailed measures for definitive regime – 19 November

ECON Committee has discussed its draft report on the detailed technical measures for the operation of the definitive VAT system. The draft report has been prepared by the MEP **Fulvio Martusciello (EPP/ITA)**.

The Committee discussion had a very positive tone overall, with several MEPs noting that changes to the current VAT system are overdue, and expressing their support for the definitive regime. **Paul Tang (S&D/NLD)**, speaking on behalf of the S&D Group, called for greater clarification on the criteria to obtain a certified taxable person (CTP) status. **Molly Scott Cato (Greens-EFA/UK)** for her part emphasised that the definitive regime would require greater trust between member states' tax administrations, and warned that the CTP status should not lead to a race to the

ECON Committee is currently scheduled to vote on the draft report on 21 January 2019. For further details on the draft report, please see Accountancy Europe's Tax Policy Update from 9 November.

ECON discusses Fiscalis reform – 19 November

ECON Committee has discussed its draft report to reform the Fiscalis system. The draft report has been prepared by the MEP **Sven Giegold (Greens-EFA/GER)**.

For further details on the draft report, please see Accountancy Europe's Tax Policy Update from 28 September.

During the hearing, Mr. Giegold stated that there is broad support for his draft report across political Groups and announced that the compromise amendments have been drafted. However, the Eurosceptic ECR group did not support provisions concerning assistance to developing countries on multilateral exchange of information and creating of the priority list of issues.

In particular, an apparent majority of the MEPs call for the Fiscalis budget to be increased to EUR 338 million, above the EUR 270 proposed by the Commission. They argue that this is essential to strengthen the fight against tax evasion and fraud at EU level. Even the liberal ALDE Group agrees with the increase in budget.

The ECON Committee will vote on its position on 27 November. The European Parliament legislates on this file on an equal footing the Council – an unusual practice in files linked to taxation.

Council

To tax or not to tax? Germany sends mixed messages on digital tax ahead of ECOFIN in December – November

All bets remain open ahead of the 4 December ECOFIN meeting where EU finance ministers will try to reach a consensus on the Commission's proposed digital services tax (DST).

Following herculean diplomatic efforts by France, the Austrian Presidency and the European Commission, most EU member states are now on board. However, a unanimous support is needed for the DST to pass, and at least Ireland, Sweden and Denmark still maintain their objection and reservations.

It is widely thought that Germany will be the key in determining DST's fate. Alas, Germany's position ahead of the December ECOFIN remains vague to say the least.

On the one hand, the German finance minister **Olaf Scholz** recently announced that he is in favour of "binding specifications" on digital taxation at the December meeting. Presumably, this would imply support for adopting the DST Directive, as anything but adopting the Directive could hardly be described as "binding". Such an endorsement would be subject to amendments especially on the date of application of the tax. Scholz has stated that he would only support a DST if it is introduced only and after the OECD has failed to reach a consensus by summer 2020.

On the other hand, the German Chancellor **Angela Merkel** even more recently explained in another interview that instead of the DST, she would like to see the introduction ("instrument") of a minimum tax rate – something that she appears to see as excluding a DST, whilst France has seen DST and minimum taxation as potentially complementary. Apparently, minimum tax provisions will be presented at the OECD level soon.

Either way, there is still little clarity on the German position, and even less so on what will happen at the ECOFIN although it is starting to look difficult for DST proponents. In any case, all Germany needs to do to not let DST see the light of day is to not put pressure on Ireland, Sweden and Denmark to approve it.

European banks comment on DST

In parallel, stakeholders continue to comment on the DST and its practical challenges. The latest example is a comment from the European Banking Federation (EBF), in which it voices concerns over the possible inclusion of financial and banking services under the tax's scope.

To rectify the situation, EBF notably recommends that the calculation of the DST thresholds should only take into account the specific activities and commissions targeted by the taxation, and not the total global turnover of companies.

Code of Conduct Group submits progress report to the Council, including work on tax blacklist – 16 November

The Council's Code of Conduct Group has submitted a progress report to the Council. The report provides an overview of all recent work and state of play of the Group's main work streams – including the list of non-cooperative jurisdictions. It also includes proposed steps forward – also on the EU list of non-cooperative jurisdictions.

The report will most likely be endorsed by the EU finance ministers at the next ECOFIN Council.

Latest on the EU list of non-cooperative jurisdictions

The progress report notably states that in early-2019, member states should continue to discuss the inclusion of a fourth transparency criterion on beneficial ownership into the blacklist screening process. Moreover, the upcoming Romanian Presidency should continue to hold discussions on coordinated defensive measures against the listed jurisdictions, the report demands.

At the same time, the Code of Conduct Group also published the following specifically on the list of non-cooperative jurisdictions:

- An overview of the state of play on commitments taken by third countries to implement tax good governance principles
- An updated EU list of non-cooperative jurisdictions – excluding Namibia which was removed from the list after the ECOFIN in November. The list also provides the reasons for the listing of each of the jurisdictions
- A compilation of commitment letters received from Saint Vincent and the Grenadines to reform its tax system

Court of Justice of the EU – Rulings

C-502/17: VAT on share disposal transactions – 8 November

The Sixth Chamber of the CJEU has ruled that a share disposal transaction, envisaged but not carried out, for which the direct and exclusive reason does not lie in the taxable economic activity of the company concerned, or which does not constitute the direct, permanent and necessary extension of that economic activity, does not come within the scope of VAT.

The General Court rules on Spanish tax scheme for amortisation of 'FINANCIAL' GOODWILL– 15 November

The General Court of the EU has decided to uphold decisions of the European Commission that classify the Spanish tax scheme for the amortisation of 'financial' goodwill as state aid incompatible with the Internal Market.

In particular, the General Court concludes that the Spanish measure is selective even though the advantage which it provides for is accessible to all undertakings liable for corporation tax in Spain. However, the Court argues that a measure may be selective even where the resulting difference in treatment is based on the distinction between undertakings which choose to perform certain transactions and other undertakings which choose not to perform them, and not on the distinction between the undertakings from the perspective of their specific characteristics.

International

Ireland opens public consultation on ATAD II implementation – 14 November

Ireland has opened a public consultation to inform its national implementation of the hybrid mismatch rules of the anti-tax avoidance Directive (ATAD II).

This consultation follows up from previous two Irish consultations on ATAD implementation, and focuses specifically on the technical aspects of anti-hybrid and anti-reverse hybrid rules. The consultation runs until 19 January 2019.

UK launches public consultation on national digital services tax – November

It appears to be a season of public consultations, as the UK also launched a public consultation on its national digital services tax (DST) outlined by Chancellor **Philip Hammond** in past weeks.

The consultation seeks views on the detailed design, implementation and administration of the DST with regard to:

- The proposed approach to defining the business activities in scope of the tax
- The proposed approach for determining the instances when revenues become taxable
- The detailed design of the safe harbour
- The effect of the DST being a deductible expense for corporate tax purposes
- The review mechanism and the link to the international process
- Reporting and payment

The deadline for responses is 28 February 2019.

U.S. Companies Flee No-Tax Caribbean Havens After EU Crackdown – 15 November

Bloomberg reports that many US multinationals are leaving or choosing to open subsidiaries in low-tax, rather than no-tax, jurisdictions as they are seen as more legitimate than the formerly popular destinations such as the Cayman Islands and the Bahamas.

Apparently, the companies are fleeing in response to new EU rules, including most of all the list of non-cooperative jurisdictions, that would require them to justify the business purpose for their offshore operations. By contrast, low-tax countries such as Singapore, Ireland and the Netherlands are becoming even more desirable, especially as they are making domestic policy reforms to demonstrate that their tax systems are more legitimate.

OECD

OECD releases guidance on Synthesised texts for providing clarity on the impact of the Multilateral Instrument – 14 November

The OECD has releases new Guidance for the Development of Synthesised Texts presenting a clear overview of the modifications to tax treaties resulting from the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS which entered into force on 1 July 2018. A Secretariat note, release on the same day, clarifies the entry into effect rules for tax treaties of jurisdictions that deposited their ratification instruments last September.

The Guidance has been developed by the OECD Secretariat, and can be used by governments that intend to provide insight into the impact of the Convention on existing treaties. Synthesised Texts also provide information to taxpayers, auditors, advisors and other users on when the modifications will have effect in each jurisdiction.

OECD invites taxpayer input on seventh batch of Dispute Resolution peer reviews – 15 November

The OECD has opened a consultation to gather input for Stage 1 peer reviews of Brazil, Bulgaria, China, Hong Kong, Indonesia, Papua New Guinea, Russia and Saudi Arabia, and invites taxpayers to submit input on specific 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 using the taxpayer input questionnaire.

Stakeholders are asked to provide their input by 13 December 2018 at the latest.

OECD strengthens level playing field with zero tax jurisdictions – 15 November

The over 120 jurisdictions of the so-called Inclusive Framework have agreed to apply the Substantial Activities Requirement under BEPS Action 5 (harmful tax practices) for "no or only nominal tax" jurisdictions, thus amending the global standard on substantial activities.

In practice, this means that countries with no or only nominal taxes should be considered to have harmful tax regimes if multinationals are permitted to apply an advantageous tax regime to IP or other mobile business income without having “substantial activities” — such as employees or expenditures — in that country.

In the same context, the OECD also published updated conclusions of regime reviews under Action 5.

Global Forum on Tax Transparency marks a dramatic shift in the fight against tax evasion with the widespread commencement of the automatic exchange of financial information – 22 November

The Global Forum on Transparency and Exchange of Information for Tax Purposes has held its annual meeting in Punta del Este, Uruguay on 20-22 November, bringing together over 200 delegates from more than 100 jurisdictions, international organisations and regional groups to strengthen further the international community’s fight against tax evasion.

The meeting marked the widespread rollout of automatic exchange of financial account of information. Global Forum members took stock of the progress made in the implementation of the standard of automatic exchange of information (AEOI) with 4500 successful bilateral exchanges having taken place under the new AEOI Standard in 2018 by 86 jurisdictions. Each exchange contains detailed information about the financial accounts each jurisdiction’s taxpayers hold abroad. Such widespread exchange was also facilitated by the use of the Common Transmission System managed by the Global Forum.

Other News

New report on capacity of tax administrations – 15 November

The NGO Tax Justice Network has published a new report on the capacity of tax administrations to fulfil their tasks.

Amongst other findings, the report observes a decline in the practice of auditing tax returns, as well as a decline in the number of on-site audits in two out of three countries observed. The report also argues that the protection of whistleblowers within tax administrations is still not satisfactory. It recommends all administrations to consider the introduction of specific laws that protect from prosecution those whistleblowers who reveal illicit practices.

PwC and World Bank publish report comparing tax systems – 20 November

PwC and World Bank have published a new report which investigates and compares tax regimes across 190 economies worldwide using a medium-sized domestic case study company.

The report looks at how new tax software, real time reporting systems and data analytics are changing the way companies meet their tax compliance obligations and how tax authorities monitor and enforce those obligations. It considers the balance between labour and income taxes, as economies consider the impact of the changes to the nature of work and the impact this has on revenue streams. It also looks at some of the different approaches taken by tax authorities to tax audits and to the provision of training for both tax auditors and taxpayers.

MEP Questions & Answers

The Common Consolidated Corporate Tax Base (CCCTB) – 13 November

The European Commission has replied to a question asked by the MEP **Louis Michel (ALDE/BEL)** with regard to the CCCTB.

In his question, Mr. Michel asks the Commission what "strategy" it will employ to ensure a swift adoption of the CCCTB. In his reply, **Commissioner Moscovici** argues that recent international developments such as the US tax reform have reinforced the case for the CCCTB even further. He also points that the CCTB is one of the priorities of the Austrian Presidency, that the Franco-German Meseberg Declaration has given new impetus to the discussions, and the member states are currently assessing the impact of the CCTB proposal's core elements on their own national tax revenues, with the support of the Commission. The Commissioner states that these factors should "facilitate discussions" on a compromise text.

Digital taxation – 21 November

The European Commission has replied to a question asked by the MEP **Louis Michel (ALDE/BEL)** with regard to digital taxation.

In his question, Mr. Michel asks the Commission how it will ensure a fair taxation of the digital economy when the digital services tax (DST) proposal is "incomplete". In his reply, **Commissioner Moscovici** insists that the DST is only a temporary solution, reminds that the Commission also made a proposal for a comprehensive long-term solution and highlights that the ultimate preferred solution is a global one.