ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

26 November – 7 December

HIGHLIGHTS

- Minority of member states vetoes digital tax plans, Franco-German roadmap for next steps published
- FTT re-launch based on the French model starts to take shape
- TAX3 Committee holds hearings on draft report, CumEx files, aggressive tax planning, hosts Moscovici
- ECON Committee of the European Parliament votes on digital tax
- Accountancy Europe publishes VAT factsheet: one-stop-shop for all pending major EU VAT proposals

European Commission

EU Joint transfer Pricing Forum publishes report on joint audits – October

The EU Joint Transfer Pricing Forum (JTPF) has published a report on joint transfer pricing audits. The report sets out ten recommendations for EU governments that wish to undertake such an approach.

The report, titled *A coordinated approach to transfer pricing controls with the EU*, discusses how joint transfer pricing audits or "controls" should be conducted, and what it takes to fulfil such controls' full potential and making them as effective as possible, including organizational and procedural matters.

The report's recommendations are non-binding. It is up to each EU member state to decide and possibly offer taxpayers a mutually beneficial transfer pricing control framework. Another key challenge for the future will be how to involve third countries.

New EU tax statistics published – 28 November

Eurostat – the EU's statistics agency – has published latest (2017) figures for tax-to-GDP rates in the EU.

According to these figures, T=the overall tax-to-GDP ratio, meaning the sum of taxes and net social contributions as a percentage of GDP, stood at 40.2% in the EU in 2017. This is an increase compared to 2016 (39.9%). In the euro area, tax revenue accounted for 41.4% of GDP in 2017, slightly up from 41.2% in 2016.

European Parliament

TAX3-ECON joint hearing on CumEx files – 26 November

The European Parliament's TAX3 and ECON Committees have held a public hearing on the CumEx Files. During the hearing, the role of the accountancy profession briefly emerged.

Indeed, Peter Simon (S&D/GER) asked the panel whether the Big Four were involved in any shape or form in the CumEx arrangements. These were the replies from the panellists:

- Dr. Gerhard Schick, member of Germany's Bundestag, insisted that the role of accountants and audit firms must be scrutinised. The banks cover themselves by hiring external experts and consultants, and then claim that they simply acted in good faith with the received advice
  - On auditors specifically, Dr. Schick stated that they did not fulfil their role well enough in undercovering CumEx schemes, and were negligent
- Mr. Oliver Schröm, a leading figure of CumEx Files investigation, highlighted that investors, banks, lawyers and accountants benefit from VAT fraud
  - On the possibility of revoking business licenses of consistent wrong-doers, he lamented that only national professional associations can do so

The TAX3 Committee report was already published a couple of weeks ago, but can still be amended through amendments, the deadline for which is 17 December. A vote in the TAX3 Committee is scheduled for 27 February.

For further information on the TAX3 draft report, please consult Accountancy Europe's Tax Policy Update from 23 November.

ECON rejects Fiscalis programme and adopts VAT generalized reverse charge mechanism – 27 November

ECON Committee has adopted its position on two tax-related files: Fiscalis Programme and VAT generalized reverse charge mechanism (GRCM).

Fiscalis Programme funding priorities set

Firstly, ECON MEPs adopted the draft report prepared by Sven Giegold (Greens-EFA/GER) on the reform of the Fiscalis programme. Fiscalis aims to strengthen the cooperation between tax administrations by means of collaboration and information exchange. The Fiscalis report will determine the rules of spending about EUR 300 million during the next seven years.

The report passed with a margin of 31 in favor and one against. Mr. Giegold expressed satisfaction with the wide margin by which the report was adopted. However, he also lamented that the Right-wing MEPs arguably watered down certain provisions. For example, joint audits and the setting up of quality registers of beneficial ownerships shall no longer be listed as priority actions of the Fiscalis Programme.

In terms of next steps, a Plenary vote is currently scheduled for 15 January 2019. Exceptionally for tax-related files, on the funding of the Fiscalis Programme the European Parliament will legislate on an equal footing with the Council, meaning that the two institutions need to find a mutually agreeable compromise. This is because the European Parliament is responsible for deciding on EU spending.

Green light for GRCM

Second, the MEPs approved a draft report on GRCM prepared by the MEP **Gabriel Mato (EPP/SPA)**. The vote passed with 24 votes in favour, seven votes against and 16 abstentions.

As a next step, the European Parliament Plenary will vote on the final opinion on 11 December. Once this is done, the Council agreement on GRCM reached in the October ECOFIN can become EU law (see the Tax Policy Update from 12 October for further details on the ECOFIN). Although the European Parliament has no say on VAT files and can only submit its non-binding opinion, this opinion is needed in order for a proposal to be finally adopted.

TAX3 holds public hearing on draft report, tax planning and hosts Commissioner Moscovici – 27 November

The TAX3 Committee has had a busy couple of weeks. On top of the CumEx Files hearing on 26 November (see article above), the MEPs also held hearings on the TAX3 draft report, aggressive tax planning practices in the EU and with **Commissioner Moscovici**.

Hearing on TAX3 Committee draft report

The TAX3 MEPs discussed the Committee's draft report for the first time after its publication. The report was already published a couple of weeks ago, but can still be amended through amendments the deadline for which is 17 December. A vote in the TAX3 Committee is scheduled for 27 February.

During the hearing, the co-rapporteurs **Jeppe Kofod (S&D/DEN)** and **Ludek Niedermayer (EPP/CZE)** stressed the progress that the series of European Parliament special tax Committees have achieved in the past five years. However, they acknowledged that a lot of further progress is still needed, and this will require member states to abandon more sovereignty around tax policy.

Overall, the contrast between the European Parliament and the Council on tax was a common theme in the debate The MEPs who took the floor pointed out deficiencies in how EU member states and their authorities operate nationally and cooperate among them, and how member states are blocking what the Committee sees as crucial elements of a better legislative framework on tax such as the CCCTB and VAT reform. Some MEPs also accused the Council of violating the principle of sincere cooperation due to its refusal to release documents necessary for the Parliament's investigations.

In terms of proposals and recommendations, many MEPs emphasized the need to better protect whistle-blowers and investigative journalists, create a European framework for research that would collect and analyse data from member states on financial and tax matters, establish a 'European FBI' for financial crimes.

For further information on the TAX3 draft report, please consult Accountancy Europe's Tax Policy Update from 23 November.

Hearing on aggressive tax planning schemes

In another hearing taking place on the same day, TAX3 Committee discussed aggressive tax planning schemes in Europe and progress made by multinationals in implementing the OECD BEPS proposals. The panel hosted representatives from Google, Facebook and the Kering Group to represent the multinationals' perspective.

The MEPs also asked the three companies' representatives for their views on digital taxation. The two tech giants in the panel inevitably fell under more intense scrutiny during the discussion. The Google and Facebook representatives explained that the reasons for the discrepancy between taxes paid in the US and in the EU was due to the current international taxation system. They highlighted that the distribution of taxing rights where products and profits are made is normal for any multinational company and they apply the same rules as everyone else.

Their companies are willing to change and to contribute to reforming the international tax system. However, these changes must be based on international level work and involve industry stakeholders in the discussion.

In terms of 'fun facts' from the discussion, the representative from Google underlined that Google employs 40,000 engineers in the US, and a mere 3000 in the EU. The Facebook representative, for his part, maintained that 98% of Facebook's revenue stems from advertising. This would make it a major contributor to a prospective EU digital services tax (DST) based on the taxation of advertising revenue (see article below for further details).

Finally, all three company representatives highlighted the need for simple and coordinated international tax rules. Tax certainty and consistency are essential for the operation of multinationals, the representatives emphasized.

Hearing with Commissioner Moscovici

The final TAX3 hearing of the intense day of 27 November hosted **Commissioner Moscovici**. The discussion focused on what the EU has achieved in terms of fighting tax avoidance and tax evasion in light of the recent scandals and leaks, what the current state of play is, and what still remains to be done.

Both MEPs and the Commissioner agreed that a surprising amount of legislative progress has been achieved since 2014 with 14 tax related files adopted, despite the unanimity requirement in the Council. However, while there is progress on tax files related to various scandals, there is a gridlock for other matters such as the CCCTB and VAT reform. The Commissioner, however, seemed confident that these files could easily be agreed during the next Parliament and Commission term.

The Commissioner also elaborated on the objectives of the tax intermediaries Directive. He emphasized that the objective is not to monitor or punish these intermediaries, but to give tax administrations the opportunity to correct their legislation if they believe they are losing too much from their tax base. Furthermore, this also works as a dissuasion mechanism in order to avoid grey areas, the Commissioner explained.

Commissioner Moscovici also reminded that the Commission will publish in January-February 2019 a Communication suggesting a move to qualified majority voting in the Council on certain tax files. He called on the European Parliament to lend its political support and weight behind this reform.

Other topics touched upon during the hearing included the digital services tax, the blacklist of non-cooperative jurisdictions, EU efforts at global level, unfair tax competition among EU member states, and more.

European Parliament Plenary adopts position on CumEx Files – 29 November

The European Parliament has adopted its official position, in the form of a Motion for Resolution, on the CumEx Files. The position notably takes stock of the vast work already done by the EU on tax and AML, emphasises the need for effective enforcement and cooperation, and calls for further investigation by the European Parliament through the establishment of a permanent tax Committee during the next parliamentary term.

As a side point of interest, the Left Groups of the European Parliament (S&D, GUE-NGL, Greens-EFA) had submitted an amendment to the Motion, which argued that large accountancy firms are "embedded in EU policy making", with a footnote to Corporate Europe Observatory's (CEO) report from July this year. In this report, CEO argued that the Big Four audit firms are using a variety of means to lobby EU's policy making processes on tax.

This amendment was defeated in the Plenary vote. However, it is worth nothing that it was defeated by a narrow majority of 307 votes against 304! All of the Left Groups voted in unison for the amendment, whilst EPP and ALDE also maintained their ranks.

ECON Committee votes on digital tax position – 3 December

ECON Committee has adopted its positions on the digital services tax (DST), prepared by **Paul Tang (S&D/NLD)**, and on digital permanent establishment by **Dariusz Rosati (EPP/POL)**.

On both files, the European Parliament only provides its non-binding opinion, whilst the member states decide by unanimity. As readers will see in the article below, once again this unanimity rule led to the demise of a tax proposal.

The DST draft report passed by a margin of 33 votes in favour, two against and two abstentions. The draft report on digital permanent establishment, for its part, was adopted with 36 votes in favour, one against and two abstentions.

On DST, the MEPs adopted a proposal to also include the provision of video, audio, games or text using a digital interface within the Directive's scope (thus implicating the likes of Netflix and Youtube). On including the sale of goods or services contracted online via e-commerce platforms, the MEPs opted for a revision clause calling on the Commission to review after two years whether including them into the scope would be necessary.

The MEPs kept the rate at 3%, but again a review clause was introduced calling on the Commission to eventually assess whether this could be raised to 5%. The EUR 750 million threshold was kept intact, but the lower EU turnover threshold was lowered from EUR 50 million to EUR 40 million. And finally, the MEPs voted in favour of a sunset clause linking the DST to either the introduction of a digital permanent establishment in the CCCTB proposal, or another Directive implementing a prospective OECD-level agreement.

A final Plenary vote is currently scheduled for 14 January 2019.

On the digital permanent establishment, the main emphasis of the work focused on a review clause calling on the Commission to assess later the provisions' impact on SMEs and the appropriateness of the definition of 'significant digital presence'. Moreover, the MEPs call for the establishment of a permanent digital tax Committee to examine the application of the Directive. It should be composed of representatives of member states and the Commission, as well as an observer from Parliament. And finally, the MEPs call for the creation of a UN body for tax matters.

Mr. Rosati's draft report is scheduled to be voted in Plenary on 13 December.

And finally, ahead of the votes in Plenary, the secretariat of the European Parliament published background briefings with a useful overview of both proposals. See here for the briefing on DST, and here for the one on the digital permanent establishment.

Council

New FTT proposals outlined – 3 December

Plans for a re-launch of the financial transactions tax (FTT) appear to be moving ahead, with France and Germany planning to put a blueprint on the table in January.

This new FTT would be based on the so-called French model. Thus the tax with a rate of 0,2% would only apply to all transactions involving domestically issued shares by companies with a market capitalisation of EUR 1 billion and above. Moreover, under the new proposal revenues from the tax would help fund a euro-zone budget, and participating countries would be allowed to use the revenues to offset their EU budget contributions.

Whilst Austria has so far expressed some scepticism towards the new FTT due to its narrower scope, other countries such as Belgium have expressed more interest. However, in a meeting taking place under the auspices of the 3 December ECOFIN (see article below), Belgium insisted that there should be an exemption for pensions funds and insurance. This is consistent with its previous positions on FTT.

It is still unclear whether the tax would be limited to the current 10 member states participating in the FTT enhanced cooperation or expanded to all other member states. Either way, member states are currently conducting assessments of projected yields from the FTT, with support from the European Commission.

Code of Conduct Group updates list of reviewed preferential regimes – 3 December

The Council's Code of Conduct Group has published an updated overview of all reviewed potentially harmful preferential tax regimes since 1998.

The updated overview The present overview is organised in three parts:

- preferential regimes of EU Member States (including Gibraltar with regard to the UK)
- dependent or associated territories of EU Member States to which EU treaties don't apply (as of the date of notification of the regime)
- other jurisdictions (now covered by the EU listing exercise).

ECOFIN: DST fails, Franco-German declaration attempts to keep momentum alive – 4 December

Despite the best efforts of the European Commission, Austrian Presidency and France, DST was not going to survive the December ECOFIN due to unexpectedly persistent opposition from Ireland, Denmark, Sweden and Finland – with potential tacit support from Germany.

Anticipating defeat and facing domestic political pressure on tax (most lately the yellow jackets protests), France prepared a joint-declaration together with Germany for an alternative way forward.

The declaration proposes the following:

- Agree by March 2019 on an amended EU DST with a tax base limited strictly to advertisement turnover and the same 3% tax rate. It would become applicable in 2021 and only if the OECD fails to deliver in 2020
- Limiting the scope to advertisement was a key demand for Germany, who fears for its increasingly digitalising industry
- Work at the OECD-level towards a minimum tax and eventually implement the OECD solution into EU law

At the ECOFIN, most member states supported the Franco-German way forward on DST. Another significant number of countries lamented the more limited scope and wondered whether it is still worth the effort, but are unlikely to oppose as it is better than nothing. And finally, the minority of usual suspects (Ireland, Sweden, Denmark, Finland) expressed renewed scepticism, insisting that OECD work is essential on digital taxation.

Commissioner Moscovici, for his part, confirmed that the Commission will take the Franco-German proposal forward but will not submit a new proposal. Instead, the DST will be amended accordingly, with the view of adopting it at the March 2019 ECOFIN. Time will show whether this happens – especially given continued skepticism from the same member states.

France has already stated that it will proceed with a national digital services tax if there is renewed failure to find agreement in March. Many other member states are likely to follow the example.

Other elements from the ECOFIN

Member states also formally adopted the four VAT quick fixes. Although a political agreement had already been reached in October, the member states had to wait for the European Parliament to submit its non-binding opinion, which it did in the meanwhile.

And finally, ECOFIN also approved a report on tax work to be submitted to the European Council. The report contains a useful overview of all recent tax work, as well as next steps ahead.

PRESIDENCY'S NEW CCTB COMPROMISE TEXT QUESTIONS TAX INCENTIVES AND SCOPE – 5 December

The Austrian Presidency has published a new compromise text on CCTB. It is unclear what the Presidency's objectives are, given that member states are still in the process of analysing the likely impact of CCTB and CCCTB to their tax revenues. However, possibly the Austrians want to show the way forward to the upcoming Romanian Presidency.

Either way, this compromise version has in [brackets] notably the sections covering the various tax incentives for R&D and more, as well as the provisions limiting the CCTB's mandatory scope to companies with a turnover of EUR 750 million or above. The brackets mean that these sections are up for future discussion, and appears to indicate some appetite among certain member states – possibly Germany and France among others on the basis of their Meseberg Agreement – to scrap the tax incentive provisions altogether and render the CCTB mandatory for all companies in the Single Market.

Court of Justice of the EU - Rulings

C-664/16: evidence of the amount of input VAT paid – 21 November

The Fourth Chamber of CJEU has ruled that a taxable person who is unable to provide evidence of the amount of input VAT he has paid, by producing invoices or any other document, cannot benefit from a right to deduct VAT solely on the basis of an assessment resulting from an expert report commissioned by a national court.

C-648/16: use of extrapolation for calculating VAT – 21 November

The Fourth Chamber of CJEU has ruled that the VAT Directive as well as the principles of fiscal neutrality and proportionality do not preclude national legislation which authorises tax authorities, in the event of serious differences between declared revenue and revenue estimated on the basis of sector studies, to use extrapolation, based on such sector studies, in order to determine the amount of turnover achieved by a taxable person and, consequently, to carry out a tax adjustment requiring the payment of additional VAT, provided that that legislation and its application enable the taxable person, in compliance with the principles of fiscal neutrality, proportionality and the right of defence, to challenge the results obtained by that method, on the basis of all of the evidence to the contrary available to him, and to exercise his right of deduction, which it is for the referring court to verify.

C-575/17: Deferral of dividend taxation – 22 November

The Fifth Chamber of CJEU has ruled that EU Treaties preclude the legislation of a member state pursuant to which the dividends paid by a resident company are subject to a withholding tax when they are received by a non-resident company, whereas, when such dividends are received by a resident company, under the general corporation tax rules they are subject to taxation at the end of the financial year in which they were received only if the latter company was profitable in that financial year, and such taxation may, where applicable, never be levied if that company ceases trading without becoming profitable after receiving those dividends.

C-264/17: input tax on works of art – 29 November

The Fourth Chamber of CJEU has ruled that:

- A taxable dealer may opt for the application of the margin scheme to the input supply of works of art which were supplied in the context of an exempt intra-Community supply, by the creator or his successors in title, when those persons do not fall within the categories of persons listed in Article 314 of the VAT Directive
- A taxable dealer may not opt for the application of the margin scheme laid down in Article 316(1)(b) of the VAT Directive to an input supply of works of art that were supplied to him in the context of an exempt intra-Community supply and, at the same time, claim a right to deduct input VAT in the situations in which such a right is precluded under Article 322(b) of that Directive, if that latter provision has not been transposed into national law.

C-548/17: taxation of professional football player agencies – 29 November

The Sixth Chamber of the CJEU has ruled that the VAT Directive precludes the chargeable event and chargeability of a tax on the supply of agency services for professional football players by an agent paid in conditional instalments over several years further to the placement, from being regarded as occurring or taking effect when the player is placed.

International

UK publishes BREXIT NOTICEs ON TAXATION – 30 November

The British government has published draft public notices on taxation of cross-border trade in the aftermath of Brexit. The documents set out the realities, the conditions and tax rules applicable to transactions and compliance in the area of taxation in a post-Brexit environment, with the aim of helping taxable persons prepare for what is to come.

G20 Declaration calls for continued work on digital taxation – 1 December

In the aftermath of the G20 meeting that took place in Argentina, the G20 leaders have published a declaration outlining priority areas for future work – including on taxation.

In the declaration, the G20 leaders commit to implement the OECD BEPS recommendations, which they see as essential. Moreover, the leaders call for consensus-based solutions for the taxation of the digital economy, and for setting up defensive measures against jurisdictions that do not adhere to OECD standards. The document also refers to "tax certainty" as a key element of international tax work.

Although legally non-binding, the declaration provides a useful overview of the tax priorities that G20 leaders currently see as the top of the tax agenda.

OECD

OECD publishes latest tax revenue statistics – 5 December

According to latest OECD figures, Tax revenues in advanced economies have continued to increase, with taxes on companies and personal consumption representing an increasing share of total tax revenues.

The OECD average tax-to-GDP ratio rose slightly in 2017, to 34.2%, compared to 34.0% in 2016. The OECD average is now higher than at any previous point, including its earlier peaks of 33.8% in 2000 and 33.6% in 2007.

Moreover, an increase in tax-to-GDP levels was seen in 19 of the 34 OECD countries that provided preliminary data for 2017, while tax-to-GDP levels fell in the remaining 15 countries. Tax-to-GDP levels are now higher than their pre-crisis levels in 21 countries, and all but eight (Canada, Estonia, Hungary, Ireland, Lithuania, Norway, Slovenia and Sweden) have experienced an increase in their tax-to-GDP ratio since 2009.

Other News

European Green Party publishes 12 election priorities, tax on the agenda – 27 November

The European Green party has published a set of priorities ahead of the European Parliament elections next year.

According to the electoral priorities, taxation will continue to be on top of the Greens' agenda. The document makes reference to tax justice and tackling the tax privileges of multinationals, amongst other tax priorities. Moreover, reportedly the Greens will prioritise on getting strong representation in future economic, financial and tax affairs Committees of the next European Parliament.

It is difficult so early on to make accurate prognoses on the possible success of Green parties in the European elections. However, in terms of general trends for now the projections are not painting a positive picture, with the Greens potentially gaining as few as 43 seats, compared to the current 52.

Opinion poll in six European countries shows widespread public support for tax on tech giants – 3 December

A survey from six EU member states, published notably by the S&D Group of the European Parliament, demonstrates that More than 80% of citizens polled in France, Germany, the Netherlands, Denmark, Sweden and Austria agreed to the introduction of a "fair tax" on tech companies.

Moreover, according to the poll the majority of voters were also in favour of a more ambitious tax, compared to the EU finance ministers, on tech giants (including companies such as Amazon and Netflix), even if the US raises objections.

It remains to be seen how much such opinion polls or public opinion at large will move the stance of those EU member states that remain staunchly opposed. It is certain, however, that movements such as the Gillets Jaunes in France will do little to appease political pressure for greater "tax justice".

Accountancy Europe publishes VAT factsheet to provide a one-stop-shop of all pending major EU VAT initiatives – 5 December

Accountancy Europe has published a VAT factsheet that provides an overview of all current EU VAT initiatives.

These VAT proposals have different objectives. Some aim to improve the competitiveness of the Digital Single Market and others to increase the cross-border trading activities of smaller businesses. Some provisions address weaknesses or inequalities in the current VAT system. Finally, Definitive Regime proposals have been introduced after over a quarter of a century of discussions and negotiations to modernise the European VAT system and make it more effective in the fight against fraud.

The factsheet sets out the proposals according to themes and provides a summary of the current state of play, the changes agreed or proposed, and an indication of the potential impact of these changes on businesses affected.

The factsheet also indicates whether the proposals have been agreed or are still under negotiation. It is intended to update this document as and when new proposals are made, or existing proposals are agreed.