ACCOUNTANCY EUROPE.

Policy update

Tax Policy Update

21 January – 1 February

HIGHLIGHTS

- Romanian Presidency holds Company Law Working Party meeting on public CBCR
- OECD publishes roadmap on next steps for taxation in the digital era
- TAX3's work continues with hearing on tax gaps and discussion on amendments

European Commission

Commission publishes report on golden visas in the EU – 23 January

The European Commission has published a comprehensive report on investor citizenship and residence schemes operated by a number of EU Member States, or so-called "golden visas".

The report maps the existing practices across Europe and identifies certain risks that such schemes may pose for the EU, in particular, with regard to security, money laundering, tax evasion and corruption. A lack of transparency in how the schemes are operated and a lack of cooperation among Member States further exacerbate these risks, the report finds.

The report was accompanied by the following documents:

- Overview of ordinary, discretionary and discretionary facilitated naturalisation procedures in all Member States
- Detailed research on Investors' schemes granting citizenship in all MS where these exist - link to document to be included
- Detailed research on Investors' schemes granting residence in all Member States where these exist
- Country summary reports, providing a quick overview and analysis of factual findings per Member State
- Analytical overview report

The report as such is not necessarily indicative of the Commission's legislative objectives, but does give indication of the direction towards which the Commission's thinking on golden visas is evolving.

Commission refers Italy, UK and Germany to CJEU for failure to comply with tax rules – 24 January

The Commission's latest monthly infringements package once again includes a number of tax-related cases and rulings. On top of a number of other tax cases, this time the package's highlights include the Commission's decision to refer Italy, the UK and Germany to the Court of Justice of the EU (CJEU).

On Italy, the European Commission referred it to CJEU for its failure to amend its legislation that provides a reduced tax rate for Italians living abroad buying their first housing on Italian soil.

Such Italian emigrants are entitled to a preferential rate of registration tax without having to fulfil the residence requirement. However, nationals of other Member States are not entitled to any such preferential treatment except under specific circumstances.

With regard to Germany, the Commission criticises the country's rejection of certain applications for VAT refunds for businesses in other Member States.

Specifically, Germany refuses in some cases to refund VAT without asking for additional information from the refund applicant where it considers that the information provided on the nature of the goods and services provided is insufficient for coming to a decision on the application. This practice leads to situations where a VAT refund is denied to applicants that fulfil the substantive requirements, the Commission maintains.

And finally, the Commission argues that the UK unlawfully extends the scope of a VAT measure which allows VAT derogations for certain commodity markets.

Currently, the UK applies a zero-rate of VAT to transactions carried out on certain commodity markets in the UK. Since this derogation was notified to the Commission in 1977, the UK has extended the scope of the measure considerably, meaning that it is no longer limited to trading in the commodities originally covered.

Commissioner Moscovici remains optimistic about digital tax agreement – 24 January

Commissioner Pierre Moscovici remains convinced that a common answer to digital taxation is better than unilateral legislation by each Member State. However, he does not believe that such unilateral legislation is necessarily detrimental to the Commission proposal, and instead can be a first step towards a European tax if they are modelled like the Commission's own proposal.

He also states that 25 Member States currently support the Commission's digital services tax (DST) proposal, and believes an agreement is quite close. As a reminder, the Romanian Presidency currently aims for an agreement on DST at the March ECOFIN.

Commission publishes reflection paper on sustainability, including environmental taxes – 30 January

The European Commission has published a reflection paper on a sustainable Europe by 2030. It provides an aspirational overview of policy measures and priorities that the Commission could envisage in order to help attain the Sustainable Development Goals (SDGs) and a green transition of the economy.

The paper's recommendations are legally non-binding, but demonstrate the current direction of thinking within the Commission on the concerned topics.

On taxation, the report highlights the importance of a green transition and proposes measures for a sustainable tax system of the future:

- Highlights the relevance of more transnational cooperation to deal with tax havens
- Harmonised taxation on negative social and environmental externalities in the EU single Market. Qualified Majority Voting (QMV) for tax decision making is a necessary condition for this, the report argues
- By 2030 introduce taxation of resource use and pollution
- To achieve the SDGs, the EU tax system should be designed to reflect real costs. This involves:
    - Changing the tax systems so that Member States reduce taxes on labour and increase them on capital, pollution, under-priced resources and other environmental externalities
    - Application of "polluter payers" and "user payer" principles

The report highlights that currently, tax revenues from labour remain eight times higher than the revenues generated by environmental taxes in the EU, and only a limited number of Member States have decreased their share of labour taxes while increasing their environmental taxes.

The report also highlights that the share of environmental taxes in total EU tax revenues has remained almost unchanged in 15 years: 6.8% in 2002 and 6.3 in 2016.

The shift of taxation burden from labour to environment can boost jobs, reduce inequalities and limit the pressures on the environment, the report argues.

European Parliament

ECON Committee adopts position on VAT definitive regime technical measures – 22 January

ECON Committee of the European Parliament has adopted the draft report on the introduction of the detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States with 42 votes in favour, no votes against and 10 abstentions. The report was prepared by the MEP **Fulvio Martusciello (EPP/Italy)**.

A concluding vote in Plenary is currently scheduled for 12 February. As always on tax, the European Parliament merely provides its non-binding opinion whilst the Member States in the Council decide by unanimity.

ECON Committee discusses priorities of the Romanian Presidency – 21 January

ECON Committee has held an exchange of views with the Romanian Finance Minister, to discuss the financial and economic affairs priorities of the Romanian Presidency.

During the hearing, the Minister tried to clarify the Presidency's Programme, criticised for being vague, and re-iterated the priorities that the Presidency aims to achieve. On tax, these included:

- Fair taxation, and in particular the modernization of the VAT system and VAT for e-commerce. The Minister emphasised that the cooperation between Member States' tax authorities needs to be bolstered, and called for the European Parliament to provide its viewpoints
- On the Commission's recently proposed Communication to move from unanimity to Qualified Majority Voting (QMV) on taxation, the Minister emphasised that the Presidency will raise the question in ECOFIN and will seek discussions notably on the scope for the QMV on tax

In the subsequent Q&A, several MEPs called for a clearer and better prioritized list of the files the Romanian presidency wants to finalize.

Tom Vandenkendelaere (EPP/Belgium) asked about:

- The EU list of non-cooperation jurisdictions to know if the Presidency has ideas on which countries should be added to the list and on sanctions. The Minister replied that the Presidency will wait for an ongoing analysis to be finalised before taking firm decisions
- Taxation of internet companies. The Minister replied that discussions will start in February on the digital services tax (DST) and will be based on last year's Franco-German proposals. Moreover, the Minister pointed out that the OECD would soon clarify the direction for an international agreement (see article below in the OECD-section) and emphasised that this work will need to be taken into account at EU-level too

TAX3 hearing on tax gaps – 24 January

The TAX3 Committee of the European Parliament has held a public hearing on the tax gap in the EU. The hearing hosted three guest speakers: **Gaetan Nicodeme** from the European Commission, Annette Alstadsæter from the Norwegian University if Life Sciences, and **Petr Janský**, author of a study titled 'Global distribution of revenue loss from tax avoidance'.

During their introductory remarks, all three guest speakers highlighted that the main challenge to adequately estimating the tax gap is a lack of data. A further issue is the fact that audits are costly, and the difficulty in observing what is going on with offshore accounts in third countries. In addition, Petr Janský added that most studies estimate the figure of corporate tax gap alone to be around 200 billion dollars annually. He also called for public country by country reporting (CBCR), as this would provide more useful data for reliable tax gap estimations.

In the subsequent Q&A, **Dariusz Rosati (EPP/Poland)** asked the panellists whether effective sanctions against non-cooperative jurisdictions would work, and what else should the EU do to bolster the fight against tax avoidance and evasion. Petr Jansky replied that sanctions could indeed work, but that they would be difficult to enforce. He called for a more fundamental change of the tax system, such as the introduction of a C(C)CTB.

Annette Alstadsæter, for her part, replied that there are two main challenges on tax avoidance: the arm's length principle, where a lack of data prevents a reliable assessment of market prices, and the legal structure of companies with different types if subsidiaries and shell companies. With regard to offshore accounts, she emphasised that the most effective way would be to target intermediaries. Enabling the use of offshore jurisdictions should be made un-appealing to them, and the current practice of fines still makes such activities economically sound.

TAX3 discusses amendments – 29 January

TAX3 Committee has held a discussion on the over 1200 amendments that were tabled to the draft report, prepared by the MEPs **Ludek Niedermayer (EPP/Czechia)** and **Jeppe Kofod (S&D/Denmark)**.

During the hearing, Ludek Niedermayer emphasised that he aims for a consensual report that can be supported by as many political Groups and MEPs as possible. He also highlighted that their report and recommendations should be "serious" and based as much as possible on information and data gathered during the Committee's hearings and research. He also applauded that a number of amendments have already been reconciled into compromise amendments, but that certain "horizontal issues" still remain that can create some disputes.

Jeppe Kofod spoke along the same lines, emphasising the importance of sticking to relevant facts and figures but also stating that he would not be interested in any compromise amendments that seek to weaken or dilute the draft report. Moreover, responding to **Paul Tang (S&D/Netherlands)** who argued that the OECD has become more ambitious than the EU on tax, Jeppe Kofod argued that the OECD would have never made it this far without EU pressure in the first place.

Finally, Molly Scott Cato (Greens-EFA) called for stronger transparency provisions and recommendations in the draft report.

The TAX3 Committee vote is currently scheduled for 27 February. Until then, the key MEPs of the Committee are engaged in tough negotiations to reconcile the various amendments and compile as many of them as possible into compromise amendments that can gather the cross-political Group support.

Council

Council informs third countries that CBCR is now a criterion for the EU tax haven list – 18 January

The Council's Code of Conduct Group on business taxation has published its notice to third countries that country by country reporting (CBCR) as mandated in the OECD BEPS Action 13 would now be one of the criteria for the EU's country blacklisting process.

Thus, in the future and subject to certain exceptions, unless the screened jurisdictions commit to implement BEPS Action 13 and exchange CBCR data with foreign tax administrations, they may end up being blacklisted by the EU and face sanctions. For now, these sanctions are mostly about EU investments and naming-and-shaming, but Member States will discuss the possibility of more coordinated joint sanctions ('defensive measures') in the course of this year.

In the meantime, the Council also published letters that it sent to Barbados, Belize, Curaçao, Mauritius, Saint Lucia and Seychelles, to seek further tax related commitments from them.

Council Company Law Working Party discusses public CBCR – 24 January

Member States' Company Law attaches met on 24 January to discuss a new compromise text on public country by country reporting (CBCR) prepared by the Romanian Presidency.

The compromise text itself only contains very minor, relatively insignificant changes in comparison to earlier versions. This is because the Presidency feels that all technical matters on the file have already been concluded, and the ball is very much in the court of the political decision-makers – EU Finance Ministers.

Thus also the purpose of the meeting of the Company Law experts was for the Romanian Presidency to "take the temperature in the room" and to see whether Member States' positions have budged, rather than to achieve some breakthrough.

This was reflected in the meeting's outcome, as indeed the opposing Member States and Germany in particular made it very clear that they still believe public CBCR to be a taxation file, rather then corporate reporting.

The only new twist from the meeting was that the Romanian Presidency reportedly asked the Council Legal Service whether they still think that public CBCR should be negotiated under taxation rather than company reporting. The Romanians' reasoning is that since the text has gone through several rounds of amendments, its substance may have changed significantly enough to warrant a new opinion.

However, at this stage it is unclear and perhaps even unlikely whether the Legal Service will issue an altered position on the matter. Moreover, even if the Legal Service was to change its stance, its opinions are legally non-binding and thus would not automatically guarantee a change of stance among the Germans and their Scandinavian allies.

Therefore, for now and for the foreseeable future, the deadlock on public CBCR continues.

Court of Justice of the EU – Rulings

C-165/17: Deduction of input tax – 24 January

CJEU has ruled that:

- Existing relevant EU legislation establish that, in relation to the expenditure borne by a branch registered in a Member State, which is used, exclusively, both for transactions subject to value added tax and for transactions exempt from that tax, carried out by the principal establishment of that branch established in another Member State, it is necessary to apply a deductible proportion resulting from a fraction the denominator of which is formed by the turnover, exclusive of VAT, made up of those transactions alone and the numerator of which is formed by the taxed transactions in respect of which VAT which would also be deductible if they had been carried out in the Member State in which that branch is registered, including where that right to deduct stems from the exercise of an option, effected by that branch, consisting in making the transactions carried out in that State subject to VAT.
- In order to determine the deductible proportion applicable to the general costs of a branch registered in a Member State, which are used for both transactions of that branch in that State and transactions of the principal establishment of that branch established in another Member State, account must be taken, in the denominator of the fraction which makes up that deductible proportion, of the transactions carried out by both that branch and that principal establishment, it being specified that it is necessary that, in the numerator of that fraction, besides the taxed transactions carried out by that branch, solely the taxed transactions carried out by that principal establishment must appear, in respect of which VAT would also be deductible if they had been carried out in the State in which the branch concerned is registered.

International

Switzerland announces position on digital economy taxation – 15 January

Switzerland has announced its formal position on the taxation of the digital economy. Unlike many EU countries, Switzerland does not plan to introduce any short-term digital tax measures.

Instead, the Swiss position emphasises that the OECD should update the corporate international tax and transfer pricing system with the aim to guarantee fair tax competition. Switzerland also supports a comprehensive review of whether and, if so, how the rules for nexus and the allocation of profits should be adapted to digitalisation. In this respect, the allocated profits should be consistent with value creation and underlying economic activities, Switzerland underlines.

On minimum taxation, however, Switzerland is more sceptical, arguing that it might restrict competition and cause undue burden on companies.

UN tax committee to update to key transfer pricing manual for developing countries – 22 January

The next edition of the UN Practical Manual on Transfer Pricing for Developing Countries will include a new chapter on financial transactions, substantial revisions current guidance on the transactional profit-split method, and new material on centralized procurement functions, according to MNE Tax.

WEF discusses taxation, digitalization and sustainable transition at the forefront – 24 January

Taxation featured on the agenda of the World Economic Forum (WEF) in Davos.

First, a video clip of the Dutch historian **Rutger Bergman** has been disseminating widely in social and traditional media. Mr. Bergman publicly called out multinationals and the wealthy for not paying their "fair share" of tax, and arguing that it is hypocritical and counter-productive to discuss charity and donations when the real focus should be on tax justice.

Second, overall in several panels the WEF attendees agreed that new taxes, including carbon pricing or a digital levy, would not only achieve a fairer economic model but would also help to fight climate change and deal with an ageing population. Moreover, the importance of ensuring that the digital and environmental transitions take place in a fair manner and paying attention to and alleviating potential side-effects on the poorest was emphasised.

And finally, WEF's main panel on tax emphasised that although there is still a long way to go in terms of reforms, a lot of progress has already been achieved. This progress includes the OECD BEPS project, US tax reform, the introduction of mandatory disclosure rules by jurisdictions and increased tax transparency.

The panel brought together **Angel Gurría**, Secretary-General of the OECD, **Heather Long**, Washington Post Economist, **Mark Pieth**, Economist, **Paschal Donohoe**, Irish Finance Minister, and **Bastian Obermayer**, journalist to discuss rethinking taxes.

Ireland criticises digital taxes

The panellists agreed that the progress until now achieved is insufficient, and there is a need for new and common approaches regarding the digital transition. Ireland expressed its concerns regarding any move in international taxation that could reduce its tax base. Moreover, the Irish Finance Minister argued that without an international agreement, taxation will become a trade issue.

The EU seems to be moving towards taxing where consumption happens, Mr. Donohoe outlined. He believes that this issue should be addressed the same way as corporate taxation under the BEPS project, otherwise exporting countries will suffer from the reforms.

The Minister outlined the key principles of Ireland's tax positions at the moment:

- Ireland still strongly disagrees with moving to Qualified Majority Voting (QMV) on taxation, as do many other small EU Member States
- Ireland continues to disagree with the digital services tax (DST) proposal
- However, Ireland wants to reassure the EU that it will not take part in a race to the bottom on taxation

OECD

BIAC weighs in on digital tax debate – 21 January

The OECD's business forum (BIAC) has published a report titled "Business Principles for Addressing the Tax Challenges of the Digitalizing Economy". The report sets out 11 principles that BIAC believes should be taken into account as nations work to update the international tax rules to account for a digitalising economy.

These 11 principles argue that any such international tax reforms should:

- Be based on long-standing and well-founded underlying principles of international taxation
- Not ring-fence the digital economy
- Respect the Ottawa Taxation Framework principles
- Be grounded in the concept of value creation
- Reduce instances of double taxation
- Be introduced as a comprehensive package
- Be reflected in model treaties and commentary
- Provide tax certainty for taxpayers and tax administrations, including strong dispute resolution mechanisms
- Have global agreement
- Minimize the administrative burden on taxpayers and tax administrations, and
- Be developed through inclusive consultation with all businesses and other stakeholders

The report was published just a few days before the OECD outlined its own next steps for reforming the international tax system to adjust it to a digitalised economy (see article below).

OECD announces progress made in addressing harmful tax practices – 29 January

The OECD has released a new publication, titled Harmful Tax Practices - 2018 Progress Report on Preferential Regimes, which contains results demonstrating that jurisdictions have delivered on their commitment to comply with the standard on harmful tax practices, including ensuring that preferential regimes align taxation with substance (BEPS Action 5).

The report was bolstered by latest assessments of 57 regimes, which found notably that:

- 44 regimes are located in jurisdictions that have delivered on their commitment to make legislative changes to abolish or amend the regime
- All IP regimes that were identified in the 2015 BEPS Action 5 report are now "not harmful" and consistent with the nexus approach, following the recent legislative amendments passed by France and Spain
- Three new or replacement regimes were found "not harmful" as they have been specifically designed to meet Action 5 standard (Barbados, Curaçao and Panama)
- Four other regimes have been found to be out of scope or not operational (Malaysia, the Seychelles and two regimes of Thailand), and two further commitments were given to make legislative changes to abolish or amend a regime (Malaysia and Trinidad & Tobago)
- One regime has been found potentially harmful but not actually harmful (Montserrat).
- Three regimes have been found potentially harmful (Thailand)

OECD publishes policy paper on digital taxation – 29 January

The OECD has published its long-awaited "Policy Note" (PN) on digital taxation. The purpose of the PN is to outline the specific areas and proposals that the OECD will work on in the next two years to find a comprehensive, common international solution.

In other words, the PN is not a list of agreed solutions as such but rather, a list of draft recommendations that OECD member jurisdictions have agreed are worth exploring and assessing further. Some of them may be rejected or everything adopted, future will tell.

The recommendations consist of two pillars:

- Measures to amend general tax rules to better accommodate digital economy, including to recognise the value of user-value creation and taxing rights to market jurisdictions and sales
    - Some of the recommendations could be a move away from the current arm's length principle (ALP), although the OECD insists that any such deviations would rather build on rather than replace or scrap the ALP
- Measures to further address BEPS issues and in particular possibly introduce a global minimum effective tax as proposed by Germany and France

The OECD might also further pursue work in the areas of tax certainty and dispute resolution to ensure that the recommendations do not lead to double taxation or inconsistencies for taxpayers. Whether or not the OECD also manages to find common agreement on dispute resolution mechanisms remains to be seen.

Next steps

The next steps of the OECD's digital tax work are as follows:

- 11-12/02/2019: OECD will publish a consultation document with a three week-response period
- 13-14/03/2019: OECD will organise a public consultation conference in Paris to discuss the recommendations and the received stakeholder feedback
- June 2019: OECD presents a mid-term progress report to G20
- 2020: final recommendations published

US initial reaction to the OECD Policy Note

The US has already shed some light to its position in the discussion. In brief, the US does not believe that the OECD will end up with reform proposals that would deviate from the ALP.

Instead, it predicts that most likely the international consensus will fall close to what the US is calling for - a modest increase in market jurisdiction taxing rights coupled with a global minimum tax.

Given that US buy-in will be a key element in ensuring the success of any international agreement, its positions on the matter warrant close attention.

Other News

Greens publish new report on effective tax rates for multinationals in the EU – 21 January

The Greens-EFA Group of the European Parliament has published a new report on effective tax rates in Europe.

According to the report, multinationals can expect to pay anything between 6% and 30% (and as little as 2% or as much as 49% in the most extreme cases) of their profit in taxes. Luxembourg has the lowest effective tax rate (2.2%) and Norway the highest (48.7%) among the 63 countries in the final sample.

The report also shows that the unweighted average of 28 EU countries' effective tax rates of 15% (in contrast the statutory rate average is 23%) is lower than the other countries' average ETR of 22% within the sample of 63 countries (in contrast their statutory rate average is 24%). The five countries with the highest ETRs (as well as some of the highest statutory tax rates) are all non-EU member states: Peru, Columbia, Pakistan, Argentina and Norway.

S&D publishes tax gap report and recommendations – 23 January

The S&D Group of the European Parliament has published a study on tax gap in Europe, authored by **Richard Murphy** from the NGO Tax Justice Network.

The study argues that tax evasion deprives European taxpayers of EUR 825 billion every year. While this represents a slight decrease compared to another estimate from the S&D Group published in 2012 and suggests that the fight against tax avoidance and evasion is paying off, the number is still alarmingly high according to the authors.

In conjunction with the study, S&D Group also published a report with recommendations for how to build a fairer tax system. The report singles out auditors and accountants for their alleged role in undermining the tax system, and its recommendations include:

- Legislation to separate accounting firms and financial or tax service providers as well as for all advisory services
- Legislation on a European incompatibility regime for tax advisers preventing simultaneous advice to public revenue authorities and taxpayers
- Introduction of public country by country reporting (CBCR), CCCTB and abandoning unanimity on tax decision-making in the EU

The report's recommendations are of course not binding, but they do give indications as to the electoral priorities of the Party of European Socialists in the upcoming EU elections.

ACCA and IFAC publish new report on public trust in tax – 24 January

The Association of Chartered Certified Accountants (ACCA) and the international organization for the accountancy profession (IFAC) have published a report on public trust in tax, based on an online survey conducted in 2018 on more than 8400 individuals across G20 countries and New Zealand.

The report shows a high level of trust in professional tax accountants, with 57% of the respondents believing in their role in making tax system more efficient, in comparison to lower percentages for professional tax lawyers and NGOs. Moreover, according to the survey professional tax accountants and online tax systems are the services most widely used by taxpayers across the G20 countries.

However, public trust is still divided and remains critically low when it comes to trust in governments, tax authorities and politicians.

The main concerns remain the need for more clarity in the tax system and feelings of inequality in tax payments. Most of the respondent would support a more coherent international tax system, while also supporting tax incentives for retirement saving, attracting multinationals and green energy projects.

CBCR is supported by 44%, with a majority believing that CBCR should only be confidentially provided to tax authorities and not rendered public.

ICAEW publishes report on digital taxation trends across the globe – 24 January

The Institute of Chartered Accountants in England and Wales (ICAEW) has published the 2019 edition of its international perspectives in tax digitalization report.

The report predicts that digitalization will change the nature of the advisor/authority/taxpayer relationship, and lead to more extensive collaboration with third parties such as information suppliers and software vendors. Moreover, the report argues that the older a tax system is, the more complex the digital transition will be.

Finally, ICAEW calls for proper legislative support to avoid risks of digital exclusion.

IMF publishes paper on the scale of tax avoidance – 28 January

The International Monetary Fund (IMF) has published a study on the scale of international corporate tax avoidance.

IMF seeks to unravel multinationals' main channels of international tax avoidance, and proposes figures to help develop a new consensus on tax optimisation and profit shifting.

The report claims to show clear evidence of tax-motivated behavioral actions by multinationals such as transfer mispricing or strategic location. However, some other channels of profit shifting remain obscure, according to the authors. In particular, developing countries lack systematic analysis of alternative channels of tax avoidance which may hamper the development of a full picture of international tax avoidance.

The report also calls for more research in order to shed light on how successful targeted anti-abuse rules are in restricting the overall extent of international tax avoidance by multinationals.

And finally, the report deplores the lack of attention on the interaction between profit shifting and the reallocation of real activities by multinationals.

Events

- 05/02/2019, ***The EU's Fight against Tax Evasion and Tax Avoidance***, FES, Brussels. Source
- 13-14/03/2019, ***Public hearing on digital taxation***, OECD, Paris. Source tbc
- 20/03/2019, ***Future trends of taxation***, ETAF, Brussels. Source