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US Warns No Trade Deal if UK Impose Digital Tax

The US has threatened to scrap trade negotiations for a post-Brexit free trade agreement after the UK last month published a policy paper concerning a digital services tax which will enter into force in April 2020. The tax will apply to businesses making search engines, social media platforms or online marketplaces available to UK users, including any associated online advertising of that business, which have a global annual turnover over £500 million pounds and over £25 million pounds of turnover attributable to revenue derived from UK users. The tax will apply at a rate of 2% to revenue over £25 million pounds.

US President Trump's administration has reportedly now advised the UK government at multiple levels that no free trade deal will be agreed should the tax be passed into law in the fall as originally planned.

This follows US President Donald Trump tweeting that there would be of "substantial reciprocal action" taken by the US concerning the French digital tax signed into law on 24 July 2019. The tweet implied that French wine may be the subject of additional tariffs.

UK Seeks Annulment of European Commission Decision in CFC Cases

The United Kingdom has filed an application with the Court of Justice of the European Union seeking that the decision of the European Commission in the CFC cases be annulled. The application was published in the Official Journal of the European Union last week.

In April, the European Commission concluded an investigation into the compliance of the UK's Controlled Foreign Company (CFC) legislation with EU State aid rules, declaring that the application of the Group Financing Exemption contained in the Finance Act 2012 partly constituted unlawful State aid to certain multinational companies. Between 2013 and end-2018, the UK CFC rules included a Group Financing Exemption that allowed multinational companies to benefit from a full or partial exemption on interest payments from loans, i.e. on payments related to certain financing income. According to the European Commission, the exemption is compliant with the State aid rules where the financing income is derived from non-UK activities. Conversely, the Group Financing Exemption on financing income derived from UK activities was considered to be in breach of the State aid rules. As a consequence, the Commission concluded that beneficiaries of the measure received an undue advantage over UK competitors who were not able to rely on the exemption and were subject to the headline corporate tax rate.

The UK in its application relies on four pleas in law: that the Commission made a manifest error in its assessment by identifying the wrong system for an examination of comparability; that the Commission made a manifest error in determining that the exemptions are a derogation; that the Commission made a manifest error in its assessment regarding selectivity; and that the Commission erred in determining that the UK CFC rules granted a benefit which would give an unfair advantage and thus affect intra-EU trade. The UK is seeking an order from the Court of Justice annulling the decision with costs.

3.

New Signatories to the OECD MLI

Albania and Namibia have become the 133rd and 134th jurisdictions to join the OECD's BEPS Inclusive Framework. Members of the Inclusive Framework have the opportunity to work together on an equal footing with other OECD and G20 countries on implementing the BEPS package consistently and on developing further standards to address remaining BEPS issues.

There are now a total of 134 jurisdictions that are participating in the project.

4.

European Economic & Social Committee Adopt Opinion on Taxation of the Digital Economy

The European Economic & Social Committee have adopted an opinion concerning the taxation of the digital economy.

The Committee opines that *"any changes to the rules for allocating taxation rights of profits among countries must be coordinated globally. The EESC therefore welcomes the close cooperation between the Commission, Member States and the OECD/G20 to support the development of an international solution, which will limit the risk of international double taxation. If an international solution cannot be reached, the EU must consider proceeding on its own".*

As to residual profit issues, the Committee *"recommends that the allocation key suggested for the Common Consolidated Corporate Tax Base, with its three factors, could be used and applied, as a starting point, for the allocation of the residual profit, if this is the method agreed upon at the OECD".*

A report on the progress of the OECD's Inclusive Framework on agreeing a method for taxation of the digital economy is expected in December 2019.

5.

Reminder: 12th European Conference on Tax Advisers' Professional Affairs on AML Directives

The 12th European Conference on Tax Advisers' Professional Affairs will be held in Paris on Friday, 29 November 2019, on the topic of "Tax Transparency Trends: Are Tax Advisers Ready for the New EU Anti-Money Laundering Rules?"

The conference will examine the impact of existing EU anti-money laundering rules and the new requirements of the 5th AML Directive, including making beneficial owners of legal entities registers public, providing increased access to information on the beneficial ownership of trusts and the expansion of AML rules to entities which store, hold or transfer virtual currencies. Speakers will also discuss enhanced cooperation and exchanges of information provided for between the EU and Member States under the 5th AML Directive. In addition, panellists will discuss compliance with and implementation of the measures in practice and the information available to supervisory bodies to facilitate their obligations under the Directive. More details about the programme and line-up of speakers will be available in due course.

Register now to benefit from early-bird registration prices and to secure your spot!