CFE's Tax Top 5

Key tax news of the week

21 September 2015

1. CJEU dismisses Dutch tax treatment of dividends paid to non-residents

On 17 September 2015, the EU Court of Justice (CJEU) delivered its judgment in the joined Dutch preliminary ruling cases Miljoen and others, C-10, 14 and 17/14. The Court held that member states may not impose a withholding tax on dividends distributed by a resident company both to resident taxpayers and non-resident taxpayers where that tax contains a mechanism for deducting or reimbursing the tax withheld only available for resident taxpayers, while for non-resident taxpayers, both natural persons and companies, the tax withheld is a final tax. This results in the final tax burden of non-residents being greater than that of resident taxpayers.

- Judgment: EN (all EU languages)
- Opinion of Advocate-General Jääskinen: EN (all EU languages)

2. Council aiming at agreement on tax rulings information exchange in October

On 11 September 2015, the EU Ecofin Council reached agreement on the proposal for a Directive introducing mandatory exchange of information on cross-border advance tax rulings and advance pricing agreements, by amending the Directive on Administrative Cooperation in Direct Tax, as proposed by the European Commission on 18 March 2015.
According to a Luxembourg presidency compromise proposal of 1 September 2015, member states have proposed allowing member states to exempt from the information exchange persons or groups of persons with an annual net turnover of less than € 40 million, as well as several changes that would limit their administrative effort: information on the amount of transactions and the validity period of the ruling/APA would only have to be exchanged where specified. Furthermore, member states do not want to report to the European Commission the identities of the parties concerned. Member states suggest that the Directive should be applied 12 months after its entering into force.
The Luxembourg presidency stated that the Directive could be formally adopted as early as 6 October.
Also discussed were rules aimed at ensuring that multinationals´ profits are taxed at a minimum rate before leaving the EU.

- News article by the Luxembourg Council presidency: EN (DE FR available)

3. CJEU decides on tax deduction of gifts made by a foundation to foreign beneficiaries

On 17 September 2015, the CJEU rendered its judgment in the Austrian preliminary ruling case Familienprivatstiftung Eisenstadt, C-589/13 concerning interim tax charged on capital gains and income from the disposal of holdings of a resident private foundation. The ECJ found that where such foundation has the right to deduct from its taxable amount gifts to beneficiaries who have been subject to a tax on these gifts in the foundation´s member state, the same deduction has to be granted if the beneficiaries reside in another member state and are exempt, on the basis of a double taxation convention, from such tax.

- Judgment: EN (all EU languages)

4. Deloitte publishes BEPS country scorecards

On a publicly accessible website, the firm Deloitte has included scorecards providing summaries of 43 different countries' perspectives of the BEPS Actions. These contain chapters on BEPS legislation, administration´s assessing practices, current governments´ positions and plans, public perspective and unilateral anti-BEPS action taken.

- Deloitte Country Scorecards EN

5. OECD recommends that tax authorities should have access to AML transactions reports

On 16/17 September 2015, the OECD held its 4th Forum on Tax and Crime and afterwards released its report titled “Improving Co-operation between Tax and Anti-Money Laundering Authorities: Access by tax administrations to information held by financial intelligence units for criminal and civil purposes”. The reports analyses the levels of co-operation between the authorities in one state combatting serious financial crimes and assesses various models for the sharing of suspicious transaction reports. The OECD recommends that tax administration should have the fullest possible access to these reports, to fight illicit financial flows, notably tax evasion, money laundering, bribery and corruption.
“Financial intelligence units” are the bodies to which, according to EU Anti Money Laundering Directive and the FATF Guidelines, suspicious transactions should be reported.
According to the recently adopted 4th EU Anti Money Laundering Directive, member states have to exempt tax advisers from a reporting obligation in the course of ascertaining a client´s legal position or defending or representing him/her in or concerning judicial proceedings.

- Report: EN
- Press release: EN
- 4th OECD Forum on Tax and Crime
    - Meeting webpage: EN
    - Statement of outcomes: EN
    - Agenda: EN

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The selection of the remitted material has been prepared by Piergiorgio Valente / Filipa Correia / Rudolf Reibel

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