# CFE's Tax Top 5

**Key tax news of the week**

**5 October 2015**

## 1. OECD finalises BEPS project

Today, the OECD presented its final recommendations on the 15 "Actions" announced in July 2013 to counter tax base erosion and profit shifting (BEPS) by corporates. This was followed by an extensive consultation process.

The recommendations are to be discussed by the G20 Ministers of Finance on 8 October 2015 in Lima and endorsed by the G20 leaders in Antalya on 15/16 November 2015.

The final package of BEPS measures proposes new standards on country-by-country reporting, treaty shopping, harmful tax practices, in particular in the area of intellectual property and automatic exchange of tax rulings, and mutual agreement procedures to prevent double taxation.

The BEPS package also revises the guidance on the application of transfer pricing rules and redefines the concept of Permanent Establishment.

The BEPS package invites governments to change their laws to strengthen controlled foreign corporations rules, adopt a common approach to interest deductibility and new rules on hybrid mismatches.

Work is being pursued on the development of a multilateral instrument capable of incorporating the tax treaty-related BEPS measures into the existing network of bilateral treaties. The OECD expects this instrument to be open for signature by all interested countries in 2016.

The CFE will provide more detailed analysis of the final BEPS Recommendations over the next weeks.

- Press release, 5 October 2015: EN FR ES DE
- Explanatory Statement 2015 : EN FR ES DE
- All final reports, 5 October 2015: EN
- Information brief for journalists: EN ES
- Memo: EN FR
- FAQs: EN FR ES
- "10 myths and facts about BEPS": EN ES

## 2. CFE PAC Conference: "Big Data – A threat to taxpayer rights?" on 13 November 2015 in Amsterdam

Will new tax transparency rules and the use of IT in tax administration facilitate compliance or will they discourage taxpayers from making full use of their rights? Do taxpayer rights need formal recognition? How will the role of tax advisers change?

Speakers from the OECD, the European Commission, several national tax administrations, academia and tax professionals have been invited to discuss these questions at CFE´s 8th conference on tax advisers´ professional affairs.

For more information and to register, please click below.

- Information and registration : EN

## 3. Joint Transfer Pricing Forum work programme 2015 – 2019

On 24 September 2015, the European Commission published the work programme for 2015-2019 of the EU Joint Transfer Pricing Forum (JTPF), an advisory expert group to the Commission to find pragmatic, non-legislative solutions to practical problems posed by transfer pricing practices in the EU. Members of the Forum are representatives of each EU member state and 18 other organisations and businesses.
The work programme includes an increased emphasis on economic analysis in transfer pricing, better use of recent companies' internal information systems and tools and making accessible the JTPF´s conclusions to a wider public. The latter is a response to public criticism of transfer pricing as a possible tool for profit shifting. For the same reason, the Commission had admitted three NGOs as members to the JTPF earlier this year.

- JTPF Work Programme 2015-2019: EN

## 4. Commission launches new initiative on Capital Markets Union / CCTB proposal in Q4/2016?

On 30 September 2015, the European Commission presented an Action Plan on Building a Capital Markets Union, announcing a series of partly tax-related measures until 2018. As the Commission explains, the EU single market for alternative sources of finance other than bank financing for businesses, in particular for start-ups and smaller businesses, is under-developed compared to other major economies. This is due to various restrictions, including different tax incentives for venture capital and business angels and tax discrimination for foreign investment funds, partly due to burdensome withholding tax refund procedures. Apart from providing more diversified sources of cross-border financing and reducing dependence from banks, improving regulatory conditions for equity financing should help reducing businesses` indebtedness.
The Communication also mentions the new CCCTB proposal which should address corporate debt bias and has been scheduled for the last quarter of 2016.
For 2017, the Commission has announced a code of conduct for member states on withholding tax relief principles, to promote systems of relief-at-source and to establish quick and standardised refund procedures. For the same year, the Commission has planned a study on discriminatory tax obstacles to cross-border investment by life insurance companies and by pension funds and possible infringement procedures in this area.
The Commission has also started three public consultations, (1) on venture capital funds, (2) on covered bonds and (3) a call for evidence on the cumulative impact of financial legislation to prevent overlaps and inconsistencies between various sources of regulation.
The Commission also adopted legislative proposals on securitisation and an amendment to the Solvency II Delegated Act.

- Press release : EN (all EU languages)
- Capital Markets Union, new dedicated website : EN (DE FR available)
- Action Plan: Communication COM(2015)468 of 30 September 2015: EN DE FR
- Staff working paper: Economic analysis accompanying the Action Plan: EN
- FAQs: EN (FR available)

3 public consultations (deadline 6 January 2016):
- Review of the European Venture Capital Funds and European Social Entrepreneurship Funds regulations : EN (dedicated website also available in DE, FR)
- Covered bonds in the European Union: EN (dedicated website also available in DE, FR)

- Call for evidence: EU regulatory framework for financial services: EN (dedicated website also available in DE, FR)

5. **Advocate-General on proportionality of German qualification and registration requirements for tax advisers**

On 1 October 2015, EU Court of Justice (CJEU) Advocate-General Cruz Villalón issued his opinion on the German preliminary ruling case X-Steuerberatungsgesellschaft, C-342/14, concerning a tax adviser company established in several other EU member states which provided tax advice to a German client and was refused by a German tax authority when trying to file tax returns, as it is not registered in Germany and is not held and managed by tax advisers, which is a regulated profession requiring a minimum qualification in Germany. As it appears, the services were provided solely through correspondence, without entering German territory.
The Advocate-General concludes that in cases where neither the EU Professional Qualifications Directive nor the EU Services Directive applies, member states may require a certain level of qualification but must take account the knowledge and skills of the professional. The actual provision of German law is considered disproportionate as it is not fully suitable to attain its objective by allowing other organisations and persons to practice tax advisory activities without having to demonstrate knowledge of German tax law.
The CJEU is not bound by the Advocate-General´s opinion. It should also be noted that the facts of the case were not fully clear and there are circumstances suggesting that there may not have been a genuine cross-border situation.

- Opinion: DE (most EU languages, not EN)

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