



12 October 2015

### 1. EU agrees on mandatory exchange of information on tax rulings/APAs

On 6 October 2015, the EU Ecofin Council agreed a change to the EU Directive on Administrative Cooperation, introducing mandatory exchange of information on cross-border tax rulings and advance pricing agreements issued from 2012 onwards. The exchange will be effective as of 2017.

Contrary to the European Commission's legislative proposal of 18 March 2015, the Commission will not receive the same information as the member states; it will only receive some basic information enabling it to monitor whether the exchange actually takes place and to develop a secure central directory for the data exchanged. Moreover, the information exchange on past rulings will only cover 5, not 10 years, as originally proposed. Rulings and APAs issued, amended or renewed in 2012 and 2013 only have to be communicated if they are still valid on 1 January 2014. Finally, member states agreed an optional exemption of rulings or APAs issued before April 2016 to companies with an annual net group turnover not exceeding € 40 million. The changes introduced by the Council represent a significant weakening of the original proposal, as they will not allow the Commission to assess the tax rulings from a state aid control point of view and to monitor trends in tax rulings policies.

The Directive will be formally adopted at one of the next Council meetings. The European Parliament's opinion which is still required but not binding has been scheduled for 26 October 2015.

Council press release, 6 October 2015 : [EN](#)

Commission press release, 6 October 2015 : [EN](#) (FR available)

### 2. BEPS Recommendations endorsed by G20 ministers / New Recommendations include tax rulings exchange mechanism / 20 countries commit to mandatory tax treaty arbitration

On 8 October 2015, the G20 finance ministers endorsed the final BEPS Recommendations presented by the OECD on 5 October. The proposed measures will now be forwarded to the heads of G20 states who will meet on 15/16 November 2015 in Antalya. To monitor the implementation of the proposed measures, the development of a monitoring framework open to all countries was agreed.

The final BEPS Recommendations contain no specific recommendations on the digital economy (BEPS 1), as the OECD concludes that its typical BEPS risks (e.g. the question of permanent establishment status of warehouses or transfer pricing related to intangibles) are not specific to the digital sector and should be dealt with in the context of other BEPS actions. The OECD does not propose any of the specific options discussed previously, like a "significant economic presence" as a nexus for taxation of digital businesses, withholding taxes on digital transactions or an equalisation levy. In VAT, the OECD proposes destination-based taxation for B2C-transactions, as applies in the EU.

On hybrid mismatch arrangements (BEPS 2), the OECD proposes changes in national laws that link the domestic tax treatment to the foreign tax treatment. The OECD refrains from commenting on whether countries should introduce CFC (controlled foreign company) rules (BEPS 3) or mandatory reporting rules for certain tax arrangements (BEPS 12), but gives recommendations for countries that decide to do so. Interest

deductions (BEPS 4) should be directly linked to income from economic activities of the same entity. On harmful tax practices (BEPS 5), a minimum standard on defining substantial activity in a country offering a preferential regime is proposed and consensus on the “nexus” approach of linking a preferential treatment of IP rights to actual research and development undertaken in the same country has been reached. A newly proposed measure is the mandatory exchange of a defined set of information on certain tax rulings, similar to the exchange just adopted at EU level.

Changes to the OECD Model Convention should establish a minimum standard against tax treaty abuse (BEPS 6) and redefine the concept of permanent establishment (BEPS 7). Changes to transfer pricing rules aim at strengthening the arm’s length principle and include particular consideration on intangibles, risk allocation and service fees.

Transfer pricing documentation should be harmonised using a three-tier standard of master file, local file and country by country reporting template; the latter is meant as a minimum standard and to be exchanged among tax administrations only (BEPS 13).

Noteworthy seems the development of a binding arbitration (BEPS 14) framework agreed by 20 countries, including the largest European economies, Japan and the US, going further than the proposed minimum. Dispute resolution and the changes related to BEPS Actions 2, 6 and 7 should be adopted via a multilateral legal instrument currently developed by about 90 countries which should be ready in 2016.

The press conference and technical presentation of last week are now online.

- OECD press release, 9 October 2015: [EN](#)
- Final BEPS Recommendations: [EN](#) (for a pdf version, please contact the [CFE office](#))
- Summaries of the final Reports: [EN](#)
- Press conference and technical presentation, 5 October 2015: [EN](#)

### **3. Commission consults on C(C)CTB re-launch**

On 9 October 2015, the European Commission opened a public consultation on the re-launch of the CC(C)TB. In its Corporate Taxation Action Plan of 17 June 2015, the Commission announced its intention to propose, as a first step, a mandatory corporate tax base without consolidation (CCTB), but with a mechanism that would allow for temporary cross-border loss offset. It is on these questions that the Commission asks for feedback; however the questions in the consultation document suggest that the Commission might be even less ambitious by proposing a Directive merely aimed at fighting BEPS at EU level, even before the CCTB proposal. Another issue addressed is whether a CCTB should be voluntary for smaller cross-border companies and whether companies that do not automatically qualify for a CCTB should have the possibility to opt for it. Further issues relate to the treatment of debt, i.e. how a bias of debt over equity financing could be prevented and how research and development can best be incentivised.

The consultation is open until 8 January 2016.

- Consultation document: [EN](#)
- Dedicated website: [EN](#) (DE FR available)

### **4. Commission updates overview of member states’ tax havens lists**

On 12 October 2015, the European Commission published an update of its list of third country jurisdictions that have been identified by EU member states for tax purposes. The update reflects changes in EU member

states' assessments of third countries' tax good governance standards, corrections to national lists and Estonia's decision to withdraw all countries from its national list.

While the Commission's ultimate goal, to develop a common EU approach to third countries in the promotion tax transparency, good governance and possibly effective taxation standards, is not yet within reach, the Commission is hoping that the list will encourage member states to update their lists more regularly. Annual updates of member states' lists are planned.

Unlike the list published by the Commission on 17 June 2015, the new list avoids giving the impression of an EU list and specific mention of the most-listed countries. The previous list had been criticised for containing information that would not up-to-date, and for not taking into account the transparency criteria monitored by the OECD Global Forum.

The CFE has contributed to the update process in the Commission's multi-stakeholder Platform for Tax Good Governance.

- Press release : [EN](#)
- Overview on EU countries' national lists : [EN](#)

#### **5. CJEU dismisses Austrian discrimination on goodwill depreciation**

On 6 October 2015, the EU Court of Justice (CJEU) decided in the Austrian preliminary ruling case C-66/14, IFN, that a provision of Austrian law which, in the context of the taxation of a group of companies, allows a parent company, in the case of the acquisition of a holding in a resident company which becomes a member of such a group, to depreciate the goodwill up to a maximum of 50% of the purchase price of the holding, while such depreciation is prohibited if a holding in a non-resident company is acquired, violates the EU freedom of establishment.

- Judgment: [EN](#) (all EU languages)
- Opinion of Advocate-General Kokott : [DE](#) (most EU languages, not EN)

#### **6. CJEU: National court may be precluded from revising a final decision in civil proceedings that is contrary to EU law**

On 6 October 2015, the CJEU decided in the Romanian preliminary ruling case C-69/14, Târșia, that it is not contrary to EU law that procedural rules for civil proceedings do not offer any opportunity to bring an action for revision of a final judicial decision for a breach of EU law. In the case at issue in which a Romanian vehicle owner claimed back his payment of a tax levied in violation of EU law, the CJEU decision was only issued after the date on which that national court decision became final. The CJEU noted that the case may be different as regards final decisions in administrative proceedings.

- Judgment: [EN](#) (All EU languages)

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