CFE's Tax Top 5
Key tax news of the week

23 November 2015

1. Commission asks the Netherlands to amend LOB clause in Double Tax Treaty with Japan

On 19 November 2015, the European Commission asked the Netherlands to amend the Limitation on Benefits (LOB) clause in the Dutch-Japanese Tax Treaty for the Avoidance of Double Taxation which entered into force on 1 January 2012. The Commission believes that, on the basis of previous cases such as C-55/00 Gottardo and C-466/98 Open Skies, a member state concluding a treaty with a non-EU/EEA country cannot agree better treatment of companies held by shareholders resident in its own territory than for comparable companies held by shareholders resident elsewhere in the EU/EEA. Similarly, it cannot agree better conditions for companies traded on its own stock exchange than for companies traded on stock exchanges elsewhere in the EU/EEA. Under the current terms of the LOB clause, some of the latter entities suffer higher withholding taxes on dividends, interest and royalties received from Japan than similar companies with Dutch shareholders or whose shares are listed and traded on recognised stock exchanges, which include certain EU and even third-country stock exchanges. The Commission's request takes the form of a reasoned opinion. The Netherlands have two months time to respond to the Commission´s request.

- Press release : November infringement package: EN (all EU languages)

2. Commission asks Spain to end discrimination of foreign non-profit entities and their contributors

On 19 November 2015, the European Commission asked Spain to amend its rules on the taxation of certain income obtained by foreign non-profit entities and of certain contributions to such entities. Currently, Spanish non-profit entities can benefit from certain tax exemptions: Taxpayers who contribute financially to those entities have access to several tax incentives in respect of their contributions. However, this does not apply to foreign non-profit entities that derive comparable income from Spain, but which are established in another EU/EEA state without a branch in Spain.
The Commission considers this to be discriminatory and a restriction of the free movement of capital and has asked Spain to amend its rules. The request takes the form of a reasoned opinion, leaving the country two months to provide the Commission with a satisfactory response.

- Press release : November infringement package: EN (all EU languages)

3. Germany asked to amend inheritance tax rules on allowances for widow(er)s living abroad

On 19 November 2015, the European Commission asked Germany to amend its inheritance tax rules permitting German tax authorities to grant a special maintenance allowance to surviving spouses or registered partners of a deceased individual only if either one or both of them are tax residents in Germany. Surviving spouses or registered partners who inherit an estate or an investment located in Germany are not entitled to such allowance if both the deceased and the heir are tax resident in another EU member state. The Commission considers this to be an unjustified restriction on the free movement of capital which may deter other EU nationals from investing their capital in German properties and investments. The Commission's request takes the form of a reasoned opinion. Germany now has two months to respond to the Commission.

- Press release : November infringement package: EN (all EU languages)

4. OECD: MAP workload increasing while resolution time remains unchanged

On 23 November 2015, the OECD released its updated statistics on mutual agreement procedures (MAPs) in the 2014 reporting period. The aggregate numbers show an increase by 19% of both new cases and pending cases in 2014. Since 2006, new and pending cases have more than doubled to now 2266 and 5423 cases, respectively.
Largest contributors of new cases are Germany, the US, Belgium and France. These four countries also have the highest number of pending cases.
The average cycle times for cases completed, closed or withdrawn remains almost unchanged at 24 months. More than 90% of OECD member countries' MAP inventories are cases with other OECD member countries. The statistics also list cases involving "partner economies", including China.
The lack of efficiency in MAPs was a reason for the OECD to propose new measures on dispute resolution as part of the BEPS project (BEPS Action 14). However, in its final Recommendations on BEPS published on 5 October 2015, the OECD did not manage to reach agreement on including mandatory and binding dispute resolution as a standard. Around 20 countries have nevertheless committed themselves to set up a binding mechanism.

- Press release: EN (FR available)
- Dedicated website : EN (FR available)
- BEPS 14 Final report : EN

5. TAXE Committee interviews further multinationals and asks for extension of its mandate

On 16 November 2015, a group of multinationals was questioned by members of the European Parliament´s TAXE Special Committee about their international tax strategies: Google, Facebook, Amazon, HSBC Bank, Barclays, Philip Morris, IKEA, Coca-Cola, Walt Disney, McDonald's and Anheuser-Bush InBev followed the Committee´s invitation.
Questions were not limited to tax rulings but also concerned transfer pricing practices more generally, the OECD BEPS Recommendations, mandatory public country-by-country reporting on profits, taxes and subsidies, a common consolidated corporate tax base (CCCTB) and activities in jurisdictions like Bermuda and the Cayman Islands.
The companies had declined a previous invitation to appear before the TAXE Committee, sparking controversy about possibilities to bar them from the EU Transparency (lobby) Register and exclude them from the possibility to meet with MEPs.
CFE President Henk Koller was interviewed by the TAXE Committee on 16 April 2015.

Prior to the meeting, Parliament's political group coordinators decided to ask the EP Conference of Presidents (the EP President and political group leaders), to propose prolonging the committee's mandate by six months. The coordinators feel that they need more time to access and analyse documents and also to monitor legislative initiatives in the corporate taxation field.

- Press release: EN (FR available)
- Video recording, extracts from the hearing, Panel I (Google, Facebook, Amazon, HSBC Bank and Barclays): All EU languages (choose interpretation)
- Panel II (Philip Morris International, IKEA, Coca-Cola, The Walt Disney Company, McDonald's and Anheuser-Bush InBev): All EU languages (choose interpretation)

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

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