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

14 December 2015

1. Latest update: CCCTB and EU-BEPS

Recent papers and statements suggest that the European Commission will, probably on 27 January 2016, present an "anti-BEPS package of legislative and non-legislative measures" that "addresses both third countries and intra-EU situations".
The C(C)CTB re-launch will probably come in summer 2016, in the form two parallel Directive proposals, a 2CTB (without consolidation element) and a 3CTB (with consolidation). The 2CTB proposal should contain an element of temporary cross-border loss offset.
The Luxembourg Council presidency has prepared a consolidated anti-BEPS Directive proposal, reflecting the current state of discussions.

- Council presidency paper: CCCTB state of play, 1.12.2015: EN
- Outcomes of the Council meeting, Press release (p.6), 8.12.2015: EN
- Luxembourg presidency anti-BEPS Directive proposal, Explanatory notes, 2.12.2015: EN
- Luxembourg presidency anti-BEPS Directive proposal, 2.12.2015: EN

2. CJEU decides on VAT treatment of property investment companies and their management

On 9 December 2015, the EU Court of Justice (CJEU) delivered its judgment on the VAT treatment of the management of property investment companies in the Dutch preliminary ruling case Fiscale Eenheid X, C-595/13.
According to the Court, these companies (meeting the conditions that capital is pooled by several investors who bear the risk connected with the management of the assets assembled in those companies with a view to purchasing, owning, managing and selling immovable property to derive a profit which will be distributed to all unit-holders in the form of a dividend, and those unit-holders benefit also from an increase in the value of their holding) are special investment funds in the meaning of the VAT Directive, if the member state concerned has made those companies subject to specific state supervision. The exemption of 'management' however does not refer to the actual management of the immovable properties, but only to the management of the company itself.

- Judgment: EN (All EU languages)
- Opinion of Advocate-General Kokott: EN

3. Ten countries give details on joint Financial Transaction Tax

On 8 December 2015, Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain issued a statement expressing their intention to progress jointly on the introduction of a Financial Transaction Tax and listing the main features of this tax:

As the statement reads, the tax should cover all share transactions (including intra-day) in the chain, except agents and clearing members, when acting as facilitators. In order to sustain liquidity in illiquid market configurations, a narrow market making exemption might be required, which reportedly is a concession to France. The tax would be paid by traders in one of the participating countries, while it is remains to be determined whether to start only with shares issued in these states. Important elements in this determination would include relocation risks and administrative costs.

For derivatives, the territorial scope should combine the residence and issuance principles with application of the counterparty principle. The aim is to apply a low rate to the widest possible base, but not to impact on the cost of sovereign borrowing.

For option-type derivatives, the tax base should be based on the option premium; for other derivative products, the base could be the market value or a notional amount (these would be term-adjusted if the product has a maturity date). In some cases, adjustments to the tax rates or to the definition of the tax base might be necessary in order to avoid distortions.

No exemption for market making activities should be granted.

The countries stress that further impact analysis is still required. Agreement on all remaining issues should be reached by the end of June 2016.

Estonia has left the group over concerns that it would hardly get any revenue and that traders would be encouraged to relocate, as most of the shares traded by Estonia´s financial institutions are issued in non-participating countries.

- Text of the joint statement, Council press release (p.4-5), 8.12.2015: EN
- Reuters article: EN
- Council presidency note on the state of the FTT, 26.11.2015: EN

4. Automatic exchange of information on cross-border tax rulings/APAs formally adopted

On 8 December 2015, the EU Ecofin Council formally adopted the amendment to the Directive on Administrative Cooperation, introducing the automatic exchange on cross-border tax rulings and advance pricing agreements as of January 2017. A transitional regime applies to rulings issued or amended from 2012 to 2016. Agreement had been reached by the Ecofin Council on 6 October.

- Tax rulings information exchange, Press release, 8.12.2015: EN (All EU languages)
- Outcomes of the Council meeting, Press release, 8.12.2015: EN
- Text adopted: EN

5. Conference: "EU Tax Policy in the 21st Century" on 14 January 2016 in Luxembourg

The conference co-organised by the University of Luxembourg and the ECJ Task Force of the CFE will address both the internal and external dimension of current EU tax policy, covering the EU reaction to BEPS, a new CCCTB proposal and VAT matters, as well as the role of the judiciary in EU tax policy, including, among other, state aid.

- Programme: EN

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