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

25 January 2016

1. **State Aid: Commission asks Belgium, France and the Netherlands to end tax exemptions for ports**

On 21 January 2016, the European Commission requested that Belgium, France and the Netherlands should make the commercial activities of their ports fully subject to corporate income tax.
The Commission states that public companies, when carrying out economic activities such as the commercial operation of port infrastructure, compete with private operators who are subject to paying corporate tax, and a difference in taxation is a distortion of competition, giving port operators a selective advantage in breach of EU state aid rules. The Commission further argues that these activities can be distinguished from the operation of infrastructure for the exercise of the essential responsibilities of the State (e.g. safety, surveillance, traffic control), which fall outside the scope of EU state aid control.
Most French ports are fully exempt from corporate income tax. The Netherlands have made public companies subject to corporation tax as of 2016, but have not included their sea ports. In Belgium, a number of sea and inland waterway ports are exempt from the general corporate income tax regime but subject to a different tax regime, resulting in an overall lower level of taxation compared to other companies in Belgium.

- Press release : EN (FR, NL, DE)

2. **Germany and Australia conclude first "post-BEPS" double tax treaty**

Germany and Australia have concluded a new double tax treaty including a number of anti-BEPS measures part of the final OECD Recommendations of October 2015. In the area of Permanent Establishment (PE), the Treaty includes a rule to prevent artificial fragmentation of PE, new rules to determine a dependent agent PE (as has been pointed out, the latter are not fully in line with the OECD Recommendations), a rule addressing the splitting up of contracts for construction or installation PEs, and the inclusion of a new rule on activities having a preparatory or auxiliary character. The Treaty also includes a principal purpose text and provides for binding arbitration in case of disputes (except where the principal purposes test applies).

- Text of the Tax Treaty : EN

3. **VAT and Digital Single Market: EP vote and anticipated VAT Action Plan**

On 19 January 2016, the European Parliament adopted an own-initiative report on the Digital Single Market. The EP favours the Mini One-Stop Shop (MOSS) system but suggests that there should be a threshold for SMEs. The report also asks the European Commission to propose a change to the VAT

Directive allowing member states to reduce VAT rates for the press, digital publishing, e-books and on-line content. The EP has also used the occasion to express once more its support for a CCCTB.
The Commission is expected to propose an Action Plan for an efficient and fraud-proof definitive VAT regime on 8 March 2016. The Commission confirmed that it would also look at the option of the reverse charge mechanism, reportedly at the request of Czech Republic.

- Text adopted: EN (all EU languages), see paragraphs 47-51

4. EU Council strategic agenda for Dutch, Slovak and Maltese presidencies trio

The current Dutch presidency of the EU Council and the two upcoming Council presidencies of Slovakia and Malta have published a joint “strategic agenda” demonstrating the three countries` commitment to ensure consistency and progress in the work of the EU Council for the next 18 months. Tax items mentioned include, i.a., improving exchange of tax information, and advancing the upcoming European Commission initiatives on (1) an anti-BEPS package to be presented on 27 January 2016, (2) the VAT Action Plan and (3) a CCCTB proposal expected in summer 2016.

- Strategic agenda: EN

*****

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

Follow us on Linked in