CFE's Tax Top 5

Key tax news of the week

1 February 2016

1. "Anti-BEPS" – CBCR –tax havens: The EU Anti Tax Avoidance Package in detail

On 28 January 2016, the European Commission presented its "Anti Tax Avoidance Package", consisting of four instruments designed at limiting tax avoidance by multinational companies:

1. A proposal for a Directive against tax avoidance practices (also referred to as BEPS- or Anti-BEPS Directive), containing anti-avoidance elements partly known from the CCCTB proposal and reflecting the OECD BEPS Recommendations. The main elements of this proposal are:
   - an interest limitation rule;
   - exit taxation of assets leaving the country, in line with the CJEU case law on cases such as *Verder Labtech*;
   - a switch-over from tax exemption to tax credit for low-taxed profit distributions from third countries;
   - an EU general anti-abuse rule (GAAR);
   - a rule on income shifted to controlled foreign companies (CFC);
   - a rule on the treatment of hybrid entities and hybrid instruments.

   The proposal provides for minimum harmonisation only, allowing member states to adopt or leave in place stricter measures.

2. Another Directive proposal, introducing mandatory country by country reporting (CBCR) of a template of financial and tax information by large multinationals (revenues > € 750m annually) to tax administrations and exchange of this information among these, according to recommended BEPS Action 13. Legislation on public CBCR has been announced for March 2016.

3. A Communication on an "External strategy for effective taxation" covering aspects relating to third countries: In particular, this includes the planned development of common EU transparency and fair tax competition criteria, and the setting up of a screening process that will result in a listing of countries that do not comply with these criteria. Possible counter-measures against listed jurisdictions such as withholding taxes or non-deductibility of transactions through these jurisdictions should be determined by member states and published by the end of 2016.
   Other measures with regard to third countries include:
   - the inclusion of updated tax good governance criteria and state aid clauses in trade agreements concluded by the Commission;
   - assistance to developing countries in domestic revenue mobilisation;
   - changes to the EU Regulation on investment of EU funds.

   The Commission would like to see this external strategy endorsed by the EU Council and Parliament. It has updated once more its overview on member states´ tax havens blacklists.

4. A Recommendation on “measures against tax treaty abuse”: Where member states include a “principle purpose tests” in their tax treaties to prevent treaty shopping, they should use a modified version of the OECD Model provision, to ensure that such clause respects the EU freedoms. The Recommendation also refers to the OECD definition of permanent establishment in their post-BEPS shape.

The CCCTB proposal is now scheduled for autumn 2016. In summer 2016, the Commission intends to issue a proposal on enhancing double tax dispute resolution.

These measures are explained in the Communication “Next steps towards delivering effective taxation and greater tax transparency in the EU”, dubbed “Chapeau Communication” which adds the wider political context and seeks to address subsidiarity concerns. A staff working paper and a study on tax avoidance carried out by a contractor add further detail to the package.

European Commission documents (28 January 2016):

- Press release: All EU languages
- “Chapeau” Communication: All EU languages
- Anti Tax Avoidance Package, dedicated EU Commission webpage: EN (DE FR available)
- Anti Tax Avoidance Directive proposal: EN (DE FR available)
- Administrative Cooperation Directive amendment proposal ("BEPS 13"): EN (DE FR available)
- Recommendation on tax treaty abuse : EN/DE/FR
- Communication “External strategy for effective taxation”: All EU languages
- Staff working document to “Chapeau” Communication: EN
- Study on Aggressive tax planning and indicators: EN
- Questions and answers: EN (FR available)
- Updated overview on EU tax havens lists (as of 31 December 2015): EN

2. Country-by-country reporting: 31 countries sign agreement at OECD

On 27 January 2016, 31 countries have signed a “Multilateral Competent Authority Agreement (MCAA)” detailing the technicalities for the implementation of the planned automatic exchange of country by country information according to the OECD BEPS 13 Recommendation. Information on the allocation of income and taxes paid and on the economic activity of the entities within a multinational group will be collected by the country of residence of the multinational, and then be exchanged with the other countries part to the agreement. First exchanges will start in 2017-2018, concerning information for 2016. The initiative is legally independent of the parallel EU proposal based on the Directive on administrative cooperation.
This MCAA is to be distinguished from the MCAA relating to the automatic exchange of financial account information (OECD Common Reporting Standard); on 27 January 2016, 79 countries have declared to take part in the latter exchange.

- Press release, CBCR: EN FR
- List of signatories, CBCR: EN
- Press release: Common Reporting Standard: EN

3. Google´s new UK tax deal faces criticism

On Friday, 22 January 2016, Google and the UK tax administration agreed a settlement according to which the multinational will pay GBP 130m in back taxes for the past ten years and slightly higher taxes for the future, while allowing Google to continue routing £4.6bn of UK sales via an Irish company that pays no tax in the UK. The deal which follows a 2009 investigation into Google´s tax affairs has faced strong public criticism suggesting that it has not been in line with the recent OECD principles and amounts to another favourable tax treatment of a multinational.
The French tax administration has been challenging since 2011 Google´s view that its French sales can be booked in Ireland and claims € 500m in back taxes.
Apple reportedly has recently agreed to pay back € 318m in taxes in Italy.

- Politico article, 23/27 January 2016: EN
- The Guardian article, 27 January 2016: EN

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