CFE's Tax Top 5

Key tax news of the week

11 April 2016

1. European Commission publishes VAT Action Plan

On 7 April 2016, the European Commission tabled its VAT Action Plan aiming to modernise the current EU VAT system. The Action Plan does not yet contain any legislative proposals but sets out the Commission´s upcoming initiatives aiming to make the VAT system simpler, more fraud-proof and business-friendly.
The Action Plan sets out the following main measures:

- key principles for a future single destination-based European VAT system, according to which the supplier of goods will collect the tax from his customer, treating domestic and cross-border supplies equally. This would be supported by a one-stop-shop system extending to all cross-border B2B supplies;
- short-term measures to tackle VAT fraud improving existing cooperation tools such as Eurofisc, to enable member states to carry out joint risk assessments and audits;
- update the framework for VAT rates and set out options to grant member states greater flexibility in setting them;
- plans to simplify VAT rules for e-commerce in the context of the Digital Single Market Strategy and for a comprehensive VAT package to make life easier for SMEs.

Concerning VAT rates, the Commission argues that the current framework (a minimum standard rate of 15% and two reduced rates of at least 5% for certain goods and services) is outdated and does not allow newly emerging services such as e-books from benefiting from reduced rates, presenting two options for reform:

- to maintain the minimum standard rate of 15% and revise the list of reduced VAT rates, or
- to grant member states more authority in determining their VAT rates. The required minimum standard rate would be abolished together with the list of reduced rates.

In cross-border e-commernce, the Commission will present a legislative proposal to modernise and provide simplification, using a one-stop shop system also for tangible goods bought online.

The Communication also recommends government measures to facilitate voluntary taxpayer compliance and to offer taxpayers digital accounts.

- VAT Action Plan, dedicated European Commission website: EN (DE, FR available)
- Communication "on an action plan on VAT: Towards a single EU VAT area - Time to decide": EN/DE/FR
- Press release: EN (All EU languages)
- Commission announcement: "20 measures to tackle the VAT gap": EN
- Questions and answers: EN (FR available)

2. Press: European Commission to strengthen public country-by country reporting

In March, a draft of the European Commission's proposal to oblige companies to publish country-by-country tax information was leaked to the press. According to the Financial Times, this earlier draft required country-by-country disclosure only for activities within the EU, thus allowing companies to present aggregated information for the rest of the world, to the disappointment of tax justice campaigners.
A revised leaked version following the "Panama Papers" suggests that changes have been introduced to disallow business which have subsidiaries in tax havens to limit their country-by-country breakdown to EU states. In its Anti-Tax Avoidance Package of 28 January, the Commission has announced work on common EU criteria to define tax havens and possible sanctions.
The ECOFIN Council is expected to deal with the proposal in June.

- Financial Times article (reserved to subscribers): EN

3. CJEU: VAT liability does not have to enjoy precedence in liquidation

On 7 April 2016, the CJEU delivered its judgment in case C-546/14, *Degano Trasporti*, on whether a liquidation procedure which would result in only partial recovery of VAT, violates a member state´s duty to effectively recover the tax.
The judgement concludes that EU law does not require member states to grant VAT debts preferential treatment over all other categories of debt. An insolvent trader may apply to a court to open a procedure for an arrangement with creditors for the purpose of settling its debts by liquidating its assets, in which that trader offers only partial payment of a value added tax debt and establishes by an independent expert that the trader's bankruptcy would not result in a greater part of the VAT debt would to be repaid. The CJEU followed the opinion by Advocate-General Sharpston of 14 January 2016.

- CJEU judgment (All EU languages): EN
- Opinion: EN (All EU languages)

4. Follow-up on "Panama Papers"

Last week´s data leak dubbed "Panama Papers" which revealed ownership information on 214,000 shell companies in the British Virgin Islands, Panama and other jurisdictions, and exposed names of politicians and other prominent persons, keeps producing news throughout the EU and beyond:
The UK Financial Conduct Authority (FCA) has asked 20 banks and financial institutions to reveal, by mid-April, any links to the Panama law firm from which the leaked documents originate and to that firm´s offshore clients. The UK opposition has asked to establish direct rule in the UK´s crown dependencies to stop tax evasion.
The French banking supervisory authority ACPR has asked the French banks for additional reporting on their activities in countries considered tax havens. France has also decided to put Panama back on its list of uncooperative countries, due to the country´s alleged poor compliance with a bilateral agreement on tax cooperation.
France, Spain and Australia have initiated investigations into possible tax fraud and money laundering, as a result of the revelations.

Germany, according to press reports, is planning disclosure obligations for tax-saving schemes and a change to limitation periods for tax evasion; these would only commence once the taxpayer has complied with his reporting obligations.

Panama so far has not committed itself to participate in the international automatic exchange of certain bank account information (OECD Common Reporting Standard). However, only in February 2016, the inter-governmental Financial Action Task Force had removed Panama from its grey list of countries lagging behind in the fight against money laundering and terrorism financing.

With the implementation of the 4th EU Anti Money Laundering Directive which has to be completed in June 2017, EU member states are obliged to set up transparency registers of beneficial owners of their legal entities and, with some limitations, also for trusts. These registers will be accessible for competent authorities, obliged entities such as tax advisers, and (in the case of legal entities) for persons and organisations having a legitimate interest.

The OECD is planning to host a special project meeting on "Panama Papers" on 13 April.

- Dedicated website of the International Consortium of Investigative Journalists: EN
- OECD press release, 8 April 2016: EN/FR
- 4th EU Anti Money Laundering Directive: All EU languages

Press:
- Le Monde article, 7 April 2016: FR
- The Telegraph article, 7 April 2016: EN
- Die Welt article, 10 April 2016: EN
- Yahoo/AFP article, 5 April 2016: EN
- Euractiv article, 5 April 2016: DE
- Statistical data on "Panama Papers": EN
- Politico article, 4 April 2016: EN

5. US announces measures against "tax inversion" deals

The U.S. Department of Treasury´s announcement of 4 April 2016 of its intention to make "tax inversion" deals, by which corporations relocate their headquarters to countries with a lower tax rate, less financially appealing, has led to the calling off of a planned merger between pharmaceutical companies Pfizer (US) and Allergan (Ireland). In the past couple of years, several US companies have changed tax domicile through an acquisition of a foreign company to profit from lower tax rates abroad. Around 23 tax inversion deals took place since 2012, according to the US Congressional Research Service. Irish-based corporations have been very popular, as they allow the firms to benefit from the Irish corporate tax rate of 12.5%, instead of the 35% rate of US corporate tax.

- The Guardian article, 5 April 2016: EN
- Irish Times article, 8 April 2016: EN

*****

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

Follow us on [Linked in](#)