



6 June 2016

1. State aid and tax rulings I: Commission publishes working paper and agrees closer cooperation with Italy, Romania and Bulgaria

On 3 June 2016, the European Commission's Directorate-General for Competition published a 6-page working paper on state aid and tax rulings meant as a preliminary summary of the Commission's views after having looked at more than 1,000 tax rulings including the "Lux Leaks" rulings, in particular rulings endorsing transfer pricing arrangements and confirming the (non-) application of particular legislation. According to the Commission paper, the remuneration of intra-group financing companies has raised concerns in some cases, as well as tax deductions for "virtual" intra-group payments. The paper also explains a preference of the Commission which of the transfer pricing methods accepted by the OECD are more appropriate for specific situations, but stresses that the Commission's focus will be on manifest breaches of the arm's length principle. On the same day, the Commission declared that it has offered member states to enter into strengthened bilateral partnerships to improve the management of state aid. One such partnership with concluded with Italy. An agreement with Bulgaria already exists and another one with Romania seems to be on the way.

- Working paper: [EN](#)
- Agreement with Italy: [EN](#)
- Press release: [EN](#)

2. CJEU rules on Swedish difference in treatment of dividends paid to non-resident pension fund

On 2 June 2016, the EU Court of Justice (CJEU) delivered its judgment in the Swedish preliminary ruling case *Pensioenfonds Metaal en Techniek, C-252/14*, on the compatibility with EU law of a difference in treatment of resident and non-resident pension funds. According to the CJEU, national law may levy a withholding tax on dividends distributed by a domestic company to a non-resident pension fund, while it imposes on dividends paid to a resident pension fund a lump-sum tax on a notional yield, which, over time, is intended to correspond to the normal taxation of all yields on capital under the general law regime. However, the Court stressed that non-resident pension funds must be able to take into account expenses directly linked to the receipt of dividends if resident pension funds are allowed to take such expenses into account.

- Judgment: [EN](#)

3. CJEU decides on VAT treatment of a mainly publicly funded water disposal system

On 2 June 2016, the CJEU rendered its decision in the Hungarian preliminary ruling case *Lajvér (C-263/15)* on the recovery of VAT on the cost of the construction and operation of an agricultural water disposal system.

The Court concluded that the operation of such system by a non-profit company which engages in such activities only on an ancillary basis constitutes an economic activity, even where those works have in large part been financed by state aid and that their operation gives rise only to revenue from modest fees, if these can be regarded as having a 'continuing basis'. The operation is a supply of services for consideration, if it is directly linked to a fee, even where performance of those services is a legal obligation. Subject to the further circumstances to be verified by the Hungarian court, VAT recovery is in principle possible.

- Judgment: [EN](#) (all EU languages available)

4. CJEU judgment on VAT liability in case of breach of customs warehousing rules

On 2 June 2016, the CJEU decided on the joined cases C-226/14 and C-228/14, Eurogate Distribution and DHL Hub Leipzig on whether VAT is due on goods which have been re-exported as non-Community goods where a customs debt is incurred due to non-compliance with formalities of the Customs Code. The Court held that this is not the case, as no import for VAT purposes can be assumed where the goods have not been removed from the customs arrangement at the date of their re-exportation but were only removed from that arrangement as a result of their re-exportation.

- Judgment: [EN](#) (all EU languages available)
- Advocate-General opinion of 12 January 2016 : [EN](#) (all EU languages)

5. State aid and tax rulings II: Commission publishes its decision to open investigations on Mc Donald's

On 6 June 2016, the European Commission published its decision of 3 December 2016 to open in-depth investigations into rulings by the Luxembourg tax authorities on transfer pricing arrangements of Mc Donald's. To date, the Commission has not taken a decision.

- Case in State Aid Register : [EN](#)
- Letter to Luxembourg : [FR](#), [EN](#)
- Press release : [EN](#) (all EU languages available)

6. OECD consults on Multilateral Instrument and updates BEPS timetable

On 31 May 2016, the OECD opened a public consultation (until 30 June) on creating a multilateral instrument to implement the tax treaty-related BEPS measures by modifying bilateral tax treaties (Action 15 of the BEPS Action Plan). An Ad Hoc Group of now 96 countries charged with developing such legal instrument was set up in May 2015. The Group aims to conclude its work and open the multilateral instrument for signature by the end of this year. The OECD invites comments specifically on the implementation of the multilateral agreement and on the matters it will deal with, namely a mutual agreement procedure including an optional provision for binding arbitration and provisions on hybrid mismatch arrangements, tax treaty benefits in inappropriate circumstances, and the artificial avoidance of "permanent establishment" status.

The OECD also updated its BEPS timetable: The next consultation papers the OECD is planning to issue are:

- Design and operation of the group ratio rule for interest deductions: 6 July 2016 (deadline: 3 August 2016).
- Hybrid mismatches and branches: 15 July 2016 (deadline: 28 July 2016).
- Interest limitation in the banking and insurance sectors: 18 July 2016 (deadline: 29 August).
- Press release : [EN](#)
- Discussion draft : [EN](#)
- List of members of the ad-hoc group : [EN](#)

7. EP to set up “Panama” Special Committee

On 2 June 2016, the European Parliament’s Conference of Presidents (consisting of the EP President and the political group leaders) agreed on a mandate for an inquiry committee “to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering and tax avoidance and tax evasion”. The alleged failures of the Commission and member states include enforcement and implementing the 3rd Anti Money Laundering (AML) Directive of 2005, the spontaneous information exchange in the 2011 Administrative Cooperation Directive, the 2006 Audit Directive, the 2013 Accounting Directive and the duty to sincere cooperation in the EU Treaty.

An inquiry committee has more powers than the TAXE Special Committee that was set up after the Lux Leaks revelations; back in February 2015, the EP’s Conference of Presidents had refused to grant the TAXE Committee inquiry powers.

The plenary of the EP will vote on 8 June on the setting up of the Committee which will have 12 month to produce its report which would also contain recommendations on the EU's external strategy for effective taxation and transparency in tax and beneficial ownership information.

- Press release : [EN](#)
- Request for a mandate : [EN](#)

8. Reforms of professional regulation: Commission consults on National Action Plans

On 27 May 2016, the European Commission has opened a public consultation on the “National Action Plans” drawn up by EU member states to explain whether or not they intend to reform the regulation of their professions. The Commission has observed that its recommendations in this matter, expressed in the country-specific recommendations as part of the European Semester, are often ignored. Indeed qualification requirements are a competence of member states, to the extent they are in conformity with EU law, in particular the proportionality requirement.

The public consultation will give stakeholders the possibility to comment on a maximum of 4 National Action Plans and express criticism towards the member states’ assessments. The outcome of the survey will feed into the development a common methodology for member states to assess the proportionality of their requirements. The consultation will be open until 19 August 2016.

- Consultation paper: [EN](#)

9. Commission publishes Communication on taxing players in the “collaborative economy”

On 3 June 2016, the European Commission has published a Communication on “a European agenda for the collaborative economy” also containing considerations on taxation (Chapter 2.5). The considerations mostly relate to the collection of taxes (VAT, income tax and other taxes such as tourist taxes) from private persons or businesses providing services on platforms like Airbnb and Uber. The paper advocates an exchange of tax-related information from platforms to tax authorities which it considers to be easy thanks to digital processing. Interestingly, the possibility of introducing a withholding tax (from the user) which was still included in an earlier draft of the paper has disappeared in the final version. The Communication does not focus on how to tax the profits generated by the platforms. The accompanying impact assessment contains an interesting overview of member states’ tax rules targeted at the collaborative economy. Italy for instance appears to consider platforms permanent establishments and withholding agents.

- Dedicated website: [EN](#)
- Communication COM(2016)356 and staff working document SWD(2016)184 (Communication also available in DE, FR): [EN](#)

Corrigendum: draft TAXE 2 report

The amendments to the draft TAXE 2 report will be made available at the bottom of this website: [EN](#)

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

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