CFE's Tax Top 5

Key tax news of the week

5 September 2016

1. Controversy over Commission state aid decision on Apple

On 30 August 2016, the European Commission issued a decision ordering Ireland to claim back € 13 billion in taxes from Apple (€ 14.5 billion including interest), granted by the country in the form of a tax ruling from 1991, being replaced by a similar one in 2007. The rulings endorse an internal split of the profits of "Apple Sales International" and "Apple Operations Europe", two companies registered in Ireland, resulting in a small portion of their profits being allocated to their Irish branches and taxed in Ireland, and a larger part attributed to stateless and untaxed "head offices" which according to the Commission´s findings were artificial, as they did not have the staff and facilities to actually control the activities on which the profits were based. The Commission maintains that these profits should have been taxed through the Irish branch. Both Irish companies also paid several billions per year to the US parent company Apple Inc. to contribute to the development of IP, as part of a cost-sharing agreement. The claim covers the period from 2003 to 2014. Stateless companies are no longer possible under Irish law.
The Commission also indicated that the amount would be reduced if other national tax authorities (of EU member states or the US) re-assessed Apple´s tax situation based on the newly emerged facts and concluded that Apple should have paid more taxes in their countries, as such increase would reduce the IT company´s tax savings from the Irish ruling.

Apple and the Irish government have announced that they will appeal the decision before the EU General Court. After that, there is a possibility for an appeal to the EU Court of Justice (CJEU). Until the decision is final, Apple will have to place the amount demanded in an escrow account.
To win the support of the independent members of the Irish coalition government, the governing Fine Gael party had to promise a full review of tax arrangements for multinationals in Ireland to be carried out by an independent expert. The Irish Parliament will be asked to endorse the legal challenge on 7 September but the main opposition party Fianna Fáil is reported to be supportive of an appeal.
The Irish government has also promised that the low corporate tax rate of 12.5% would not be increased and that R&D tax credits would be maintained.

The case has also fuelled discussions within the US whether the country should change its policy towards profits of US companies earned abroad, to encourage companies to repatriate profits rather than have them taxed by other countries. According to a study published by the NGO Citizens for Tax Justice in October 2015, Apple has parked about $181 billion outside the US. The total amount piled up abroad by US companies is estimated to exceed € 2 trillion.

- European Commission press release, 30.8.2016 (full decision not yet available): All EU languages
- Statement by Commission Vestager, 30.8.2016: EN
- Irish revenue statement, 30.8.2016: EN

- Economist article, 3.9.2016: EN
- EUObserver article on Irish situation, 2.9.2016: EN
- EurActiv article on Irish situation, 2.9.2016: EN
- EurActiv article on reactions in the US, 31.8.2016: EN
- Reuters article with quotes from Commissioner Vestager, 1.9.2016: EN
- Video of Commissioner Vestager announcing the Apple decision, 30.8.2016: EN

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