



22 November 2016

1. European Commission hosts joint conference with IMF to coincide with publication of new report on the performance of EU Member States' tax systems

The European Commission published a new report examining how tax systems of the Member States are performing against the taxation priorities of efficiency and fairness. The report is predicated on the notion that the two highest priorities of European citizens are economic stability and social justice and the report seeks to address how taxation systems can achieve these two inter-connected objectives.

The report contains a summary of recent reforms in Member States which illustrate how decision makers are seeking to achieve the two objectives. It also presents the elements of the design and governance of member State tax systems which influence the key characteristics of efficiency and fairness. Finally, it sets out and explains the key policy priorities for the next European Semester cycle.

A copy of the report is available here - [Link](#)

In conjunction with the publication of the report, a 2-day conference was held in Brussels on 17 and 18 November. A Link to the seminar contents is available here - [Link](#)

2. EU Code of Conduct Group (Business Taxation) publishes report of work under Slovakian presidency

The Code of Conduct Group (Business Taxation) on harmful tax competition has published its report on the clarification of the third and fourth criteria carried out by the relevant sub-group of the Code of Conduct.

The third criterion is "*whether advantages are available without any real economic substance being generated in the Member States concerned*". The code of conduct sub-group was tasked with developing guidelines in line with the OECD BEPS Action 5 (Harmful tax practices). The report states that in relation to patent box regimes it will substantiate the principles of the modified nexus approach, as described in the OECD BEPS Action 5 report.

This comes subsequent to the Code of Conduct Group's notification that France's failure to revise its patent box regime in line with the modified nexus approach is in contravention of Ecofin Council conclusions of 9 December 2014 and 8 December 2015.

The report also identified the following regimes as being in need of review:

- ✍ Holding company regimes
- ✍ Banking and insurance regimes
- ✍ Fund management regimes
- ✍ Financing and leasing regimes
- ✍ Headquarters regimes
- ✍ Distribution and service centre regimes
- ✍ Other regimes that may be identified by the group.

In relation to the fourth criterion pertaining to transfer pricing the report recommends that the Commission consider reviewing the EU Code of Conduct on transfer pricing documentation by the end of 2019. It states that this should be carried out through the joint Transfer Pricing Forum Expert Group.

The report is available here - [Link](#)

3. Advocate General Kokott finds Belgium's fairness tax incompatible with the EU Parent-Subsidiary Directive

A 2013 Belgian law imposes a "fairness tax" on domestic companies and foreign companies that have permanent establishments in Belgium in circumstances where the company distributes profits but pays little corporation tax in that same taxable period.

Proceedings were issued by a taxpayer before the Belgian constitutional court arguing that the law contravened the freedom of establishment and the EU parent-subsidiary directive. The Belgian court referred the questions to the European Court of Justice.

The impugned law makes no distinction as to whether gross dividends used to calculate the fairness tax include dividends received by the distributing company. Therefore, if the company distributes profits through a distribution of dividends which the company itself received, the law could subject a company to a tax burden in excess of that allowed in article 4 (3) of the Parent-Subsidiary directive. It therefore contravened the Directive.

However, AG Kokott held that the law is not in contravention of the freedom of establishment.

A copy of the Opinions is available at this link - [Link](#)

4. EU Finance Ministers agree on improvements to EU VAT Rules at November ECOFIN Meeting

In response to the VAT Action Plan published earlier this year the Council adopted guiding conclusions for how best to improve VAT rules relating to cross-border transactions. More specifically, the conclusions relate to:

- ✍ the VAT identification number as an additional condition for application of an exemption in respect of an intra-EU supply;
- ✍ improving the quality and reliability of data used in the EU's VAT information exchange system in order to better tackle VAT fraud;
- ✍ determining the VAT treatment of the transaction chain, including 'triangular transactions' (where goods are shipped from a member state other than that of the supplier and the customer);
- ✍ simplifying rules for call-off stock (where goods are sent to a customer's storage facility in another member state);
- ✍ work concerning the exemption from VAT of intra-EU supplies.

A copy of the conclusions is available at this link - [Link](#)

5. CFE PAC Conference in Ljubljana – Follow up

Judging by the comments shared with the CFE team, our annual Professional Affairs conference in Ljubljana has been incredibly successful. The speakers discussed a very topical subject; the possible introduction of effective disincentives for tax advisers involved in aggressive tax planning, as well as the possibility of regulation of the tax profession in certain countries. Panel one discussants brought an international perspective of the issue, while panel two speakers advanced a regional position on the regulation of the tax profession. The CFE team would like to thank all the speakers on their contributions towards a successful conference. Many thanks to our Slovenian member organisation ZDSS for the warm welcome.

[Link](#) to the speakers' presentations

[Link](#) to conference pictures

Link to our Twitter account for the related tweets: https://twitter.com/cfe_brussels

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