



06 February 2017

1. Maltese Presidency – tax policy priorities

The Maltese Presidency presented its work programme, including its tax priorities for the coming 6 months at the recent ECOFIN meeting that took place in Brussels on 27 January 2017. Malta will hold the Presidency until June 2017. The priorities are as follows:

- Reaching final agreement on the text of the amendment to the Anti-Tax Avoidance Directive relating to hybrid mismatches with third countries.
 - This is presently at an advanced stage as broad agreement was reached at the December ECOFIN Meeting. However, agreement failed to be reached on some outstanding issues such as the implementation date and measures relating to certain types of financial instruments.
- The re-launch of the Common Consolidated Corporate Tax Base;
 - At a recent public hearing of the European Economic and Social Committee (EESC) on the CCCTB, Mr. Anthony Vella Laurenti from the Maltese Ministry of Finance outlined that the Presidency would focus on the tax technical elements of the proposals, particularly in relation to the “Super Deduction” for R&D, the allowance for growth and investment and the temporary cross-border loss relief.
- Reaching agreement on the proposed Directive on Double Taxation Dispute Resolution Mechanisms in the EU. Mr. Vella emphasised at the EESC meeting that this is a top priority of the Presidency.
- Proposals on e-commerce and the reduced rates on e-publications, in the area of indirect taxation.

2. Application made to ECJ in response to EU Commission Decision in Belgian Excess Profits Scheme – (Case T-832/16 *Celio International v Commission*)

The applicant in the case *Celio International v Commission* lodged an Action before the ECJ. The case concerns a finding by the Commission that selective tax advantages granted by Belgium under its "excess profit" tax scheme constituted illegal state aid under EU state aid rules. The scheme has benefitted at least 35 multinationals mainly from the EU.

The Action brought by Celio International SA requests the following of the Court:

- To annul the Commission's decision of 11 January 2016
- Alternatively, to annul certain elements of the Commission Decision (namely Articles 2-4 of the Commission Decision); or
- Alternatively to annul those paragraphs in so far as they:
 - require the recovery from entities other than the entities that have been issued an 'excess profit ruling' as defined in the Decision; and
 - require the recovery of an amount equal to the beneficiary's tax savings, without allowing Belgium to take into account an actual upwards adjustment by another tax administration.
- The Commission pay the costs of the proceedings.

The applicant's main legal arguments to ground the above pleas include, manifest error of assessment, and failure to provide adequate reasons in relation to the existence of an aid scheme, that the scheme gives rise to an advantage or that the scheme grants a selective advantage.

3. Apple lodges official appeal with ECJ

Two Irish Apple companies, Apple Sales International and Apple Operations Europe have lodged an appeal to the European Court of Justice against the decision by the European Commission that Ireland granted illegal state aid to the companies.

It comes as, Margrethe Vestager, EU Commissioner for Competition, appeared before an Irish Parliamentary Committee on Tuesday 31 January. The Commissioner reiterated the basis for the Commission's Decision that two tax rulings granted by the Irish tax authorities to Apple constituted illegal state aid. Ms Vestager had stated previously that other European countries could seek to claim a portion of the 13 Billion. However, last week she stated that tax authorities in other Member States must be able to prove Apple generated taxable profit in their countries to be in a position to put in a claim.

4. New EU Transparency rules on Tax Rulings has entered into force

The EU's new transparency rules, requiring Member States to automatically exchange data on tax rulings and advance pricing agreements (APAs) entered into force on 1 January 2017. The first exchanges of information are due to take place in September this year. Member States are required to provide information on all cross-border rulings issued since 2012 by 1 January 2018.

The new rules require Member States to send an electronic report listing all cross-border tax rulings and APAs issued by that Member State. The reports will be filed through a central depository system from which Member States can view the rulings and if necessary request more information on a particular ruling. The reports must be filed every six months.

5. OECD releases Peer Review Documents for assessments for two BEPS Minimum Standards

On 1 February the OECD published key documents which will form the basis of the peer review of two of the BEPS Minimum Standards; Action 13 on Country-by-Country reporting and Action 5 dealing with the Transparency Framework. Each of the four BEPS minimum standards is subject to peer review in order to ensure timely and accurate implementation.

The documents include the Terms of Reference for assessing the implementation of the minimum standard, and the procedures by which jurisdictions will complete the peer review, including the process for collecting the relevant data, the preparation and approval of reports, the outputs of the review and the follow-up process.

The documents are available at the following links:

[BEPS Action 5](#)

[BEPS Action 13](#)

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