



13 March 2017

1. European Economic and Social Committee supports Double Taxation Dispute Resolution proposal

The European Economic and Social Committee (EESC) unanimously supported the European Commission proposal for Council Directive to improve double taxation dispute resolution mechanisms in the EU. The Committee agreed with the European Commission that double taxation is one of the biggest tax obstacles to the EU Single Market. According to the EESC, the approval of this opinion sends a strong signal to stakeholders and governments to act, considering the urgent need for mechanisms ensuring that cases of double taxation are resolved more quickly and more decisively when they arise between Member States. The EESC also supported the European Commission initiative to extend its monitoring of countries' performance in all cases of double taxation disputes in cross-border situations on a yearly basis, in order to assess whether the objectives of the directive are met.

According to the proposal, where Member States do not automatically start the arbitration procedure, the taxpayer can ask a national court to take the necessary steps for setting up an arbitration committee to deliver a final, binding decision on the case within a fixed timeframe. The EESC opinion was adopted at the 523rd plenary session, held on 22 and 23 February 2017.

- Opinion of the EESC available in [all official EU languages](#)

2. Reference for preliminary ruling on the interpretation of 'beneficial owner' in context of the EU Interest and Royalties Directive

On 6 March 2017, the Danish court Vestre Landsret filed a reference for preliminary ruling in the case of the applicant BEI ApS versus the defendant Skatteministeriet, the Danish Ministry of Taxation (Case C-682/16).

The referring court seeks interpretation of the Directive 2003/49/EC in case of a company resident in a Member State that is covered by Article 3 of the Directive. The referring court asks if a resident company receives interest from a subsidiary in another Member State, whether it is the 'beneficial owner' of that interest for the purposes of the Directive, and whether the concept 'beneficial owner' in Article 1(1) of the Directive 2003/49/EC, should be interpreted in accordance with the corresponding concept in Article 11 of the OECD 1977 Model Tax Convention.

The Danish court further asks for clarification whether the concept has a static or dynamic meaning. I.e., whether the 'beneficial owner' concept should be interpreted in the light of the commentary on Article 11 of the 1977 Model Tax Convention (paragraph 8), or can subsequent commentaries be incorporated into the interpretation, including the additions made in 2003 regarding 'conduit companies', and the additions made in 2014 regarding 'contractual or legal obligations'.

Among other questions referred, the Danish court is also seeking clarification on the interpretation of the relationship between anti-abuse provisions covered by Article 5 of the Directive that Member states have implemented in domestic law, and the provisions of double taxation treaties entered between EU member states under which taxation of interest is conditional on whether the interest recipient is the beneficial owner of the interest.

The EU Interest and Royalties Directive was enacted in 2003 to eliminate withholding taxes in the area of cross-border interest and royalty payments within a group of companies by abolishing withholding taxes on royalty payments arising in a Member State, and withholding taxes on interest payments arising in a Member State.

- Reference for preliminary ruling C-682/16 available in [all EU languages](#)

3. European Commission appoints new Director for Indirect Taxation and Tax Administration

The European Commission decided on Wednesday 8 March to appoint Maria Teresa Fabregas Fernandez to the position of Director for Indirect Taxation and Tax Administration in the Directorate General for Taxation and Customs Union (DG TAXUD). Fabregas Fernandez joined the European Commission in 1997. Her career at the Commission focused on financial services and capital markets whilst also covering a variety of other topics, including industrial goods and services, better regulation, enterprise policy and inter-institutional relations as well as trade facilitation. In 2012, Fabregas Fernandez became Head of Unit for the Securities Markets in its department for Financial Stability, Financial Services and Capital Markets Union (DG FISMA).

Since 2015, Fabregas Fernandez is Head of Unit for Financial Markets in this department. The appointment as Commission Director will take effect on 16 March 2017.

4. UK Chancellor of Exchequer announced penalties for enablers of tax avoidance

The UK Chancellor of Exchequer Philip Hammond announced in the Spring Budget on 8 March new financial sanctions for professional enablers and facilitators of tax avoidance arrangements that are later defeated by the HMRC, the UK tax authority. The measure, originally planned in the Autumn Statement, will be introduced in July 2017. The British government expects the new penalty regime to raise at £10m in the coming tax year, rising to £50m in 2018-2019.

The Chancellor also plans to remove the defence of having relied on non-independent advice as taking reasonable care when considering penalties for companies that engage in such activities. The new measure would not be relevant to tax professionals who are already subject to professional codes of conduct.

- The Guardian: [Tough Penalties for Enablers of Tax Avoidance](#) (8 March 2017)
- HMRC Public Consultation [“Strengthening tax avoidance sanctions and deterrents: Summary of Responses”](#)

5. Heading for Brussels end of March to attend the CFE Forum?

It is not too late to register. This year’s Forum brings a prominent line-up of speakers to discuss the topic: *“Do you have a taxable presence in a country? The New Reality Permanent and Fixed (VAT) Establishments in the Post-BEPS World”*. The CFE Forum will take place on 30 March 2017, 9:00 to 16:30, at the Representation of Nord-Rheine Westphalia to the European Union (Rue Montoyer 47, B-1000 Brussels).

- Programme and registration details available [here](#)

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