



20 March 2017

ECOFIN Council Meeting to discuss generalised reverse charge in VAT

The Council of the European Union sitting as ECOFIN shall discuss tomorrow the proposals to establish a generalised reverse charge mechanism in VAT alongside proposals that would reduce the VAT rates for electronic publications. The generalised reverse charge mechanism in VAT follows up on a request from Member states significantly affected by VAT fraud. The proposed directive offers a solution to the so-called 'missing trader' or 'carousel' fraud, where supplies are traded several times without payment of VAT due on the transactions. Under present rules, reverse charge can be applied as temporary measure only, whereas the proposed directive would established a generalised system applicable on a voluntary basis until 30 June 2022.

The reduction of VAT rates for electronic publications concerns amendment of Directive 2006/112/EC to allow for 'super-reduced' rates for e-publications that would go down to zero. The proposal is part of European Commission's Digital Single Market plan.

Both directives require unanimity in the Council vote on the basis of Article 113 on the Treaty of the Functioning of the European Union.

? Economic and Financial Affairs Council Meeting website, available in [all EU languages](#)

European Commission announced anonymous whistleblower instrument

The European Commission announced on 16 March a new whistleblower service that would allow for individuals or business entities to files anonymous reports about wrongful business practices that might be in violation of EU competition law.

The tool will primarily serve as instrument to provide the European Commission with information on anti-competitive practices such as antitrust violations, existences of secret cartels, price fixing and fixing of procurement procedures. The tool is envisaged to enhance Commission's lenience programme, under which entities can report their own involvement in cartels in exchange for reduction of fine.

According to EU Commissioner Margrethe Vestager: *"If people are concerned by business practices that they think are wrong, they can help put things right. Inside knowledge can be a powerful tool to help the Commission uncover cartels and other anti-competitive practices. With our new tool it is possible to provide information, while maintaining anonymity. Information can contribute to the success of our*

investigations quickly and more efficiently to the benefit of consumers and the EU's economy as a whole"

The new anonymous whistleblower service can be accessed at the following [LINK](#).

Germany published Administrative Practice on Profit Attribution to Permanent Establishments

The German Federal Ministry of Finance published the final version of its Administrative Practice for profit attribution to permanent establishments (PEs), which is based on an earlier version of the document published on 18 March 2016. This Administrative Practice is not binding law, rather a detailed explanation of the law that reflects the interpretation of the German tax administration. The Practice puts into effect the authorised approach concerning the application of the OECD applicable principles, as required by German law. The applicable German legislation for attribution of profits to permanent establishments consists of the Section 1 of the Foreign Tax Act and the Regulation for profit attribution to permanent establishments. This Administrative practice is to be read in light of the OECD BEPS Action Point 7. The Practice explains in particular the application of the arm's length principle to PEs treated as fully separate entities, requiring functional and risk analysis for the business activities of the PE. Considering the separate entity approach of German tax law, the PE from a legal perspective cannot enter into contractual relationship with the head office. For fiscal purposes, dealings between a head office and a PE are considered assumed contractual relationships.

In respect of the transfer-pricing documentation requirements, entities which operate a permanent establishment in Germany are required to substantiate the profit attribution to the PE, also documenting the internal dealings, i.e. assumed contractual relationships. Such a documentation would need to be filed in case of a tax inspection or audit.

The issue of profit attribution to permanent establishments is the very topic of CFE's Forum 2017.

Would like to hear more about profit attribution to PEs? Register for CFE's Forum 2017.

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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