CFE's Tax Top 5
Key tax news of the week

24 April 2017

European Commission publishes report on tax uncertainty

On 7 April 2017 the European Commission published a report on tax certainty entitled "*Tax uncertainty: Economic Evidence & Policy Responses*". The Report comes at a time when tax uncertainty is gaining increasing prevalence on the international stage, with it being a priority of the G20 and OECD. There has been concern that the myriad of corporate tax policy initiates to combat aggressive tax planning at OECD and EU level is contributing to an increased tax uncertainty. At a recent informal ECOFIN meeting in Malta, tax certainty was on the agenda; Malta's Minister for Finance, and head of ECOFIN emphasised the importance of tax certainty and the need for the EU to enhance tax certainty so that multinationals can understand ahead of time how their EU investments will be treated. He dismissed any suggestions that encouraging tax certainty in any way conflicts with implementing proposals to combat tax avoidance.

The Commission Report concludes that tax uncertainty derives from many national and international sources but weaknesses if the institutional framework of tax policy is the primary cause. At a domestic level the report cites typical sources of uncertainty as being the lack of precision of the tax code and frequent tax changes. An additional source of tax uncertainty stems from the overall political and administrative process of pursuing a tax reform: from the announcement and preparation, to the implementation and the following fine-tuning.

At the international level, the lack of tax coordination/cooperation between countries, as well as the globalization and the emergence of new business models, are the main reasons of increased tax uncertainty regarding the tax treatment of cross-border investment.

The Report identifies the simplification of the tax system as the main remedy to tax uncertainty and opines that the BEPS initiative and the EU agenda to fight aggressive tax planning are promoting more coordination among governments should result in greater tax certainty.

The EU Commission Report is available at this link: Taxation Paper 67 – Tax uncertainty: Economic Evidence & Policy Responses

ECJ VAT Case – C-493/15 (*Identi*), interaction with bankruptcy laws and ability of tax authorities to collect VAT due.

The case concerned a VAT assessment raised by the Italian tax authorities on a general partner of an insolvent company who had recently been declared bankrupt by the Italian courts. The first-tier Italian Tax Tribunal found the assessment to be unlawful, a decision which was upheld on appeal. The Italian tax authorities sought to have this decision set aside by the Supreme Court of Cassation in Italy.

The question arose as to whether the bankruptcy proceedings are in contravention of EU law and state aid rules on the basis that it precludes recovery of settled VAT debts due by a bankrupt person being recoverable by tax authorities.

The ECJ assessed whether it contravened the principle that Member States are obliged to ensure collection of all the VAT due on their territory as well as the effective collection of the EU's own resources.

The Court held that strict conditions applied to the bankruptcy procedures to ensure the procedures were used only in good faith, including that the creditors in the proceedings have been partly satisfied in part. Furthermore, it was concluded that the bankruptcy proceedings are not of general application and does not constitute a general and indiscriminate waiver of collecting VAT. It is therefore not contrary to the obligation of Member States to ensure effective collection of VAT due in their territory.

On the issue of whether the rules on the discharge from bankruptcy State aid it was held that it does not meet the requirements for the classification of state aid and therefore does not constitute state aid.

Please follow the link for Case C- 493/15

Starbucks State Aid Commission Decision published in Official Journal

The non-confidential version of the European Commission decision EU/2017/502 on the alleged State aid awarded by the Netherlands to Starbucks was published in the Official Journal of the European Union L83/38 of 29.3.2017 in all official EU languages.

The European Commission adopted the Starbucks decision in October 2015 establishing that the Netherlands had awarded unlawful State aid to Starbucks by virtue of an Advance Pricing Agreement (APA) that allowed for artificial reduction of the company's taxable base, compared to entities in similar legal and factual situation. In a nutshell, the European Commission claimed that Strabucks' transfer-pricing arrangements were in breach of Article 107(1) TFEU, which resulted in unduly reduced taxable base involving intra-group transactions that had not reflected market reality, rather 'economically unjustifiable assumptions'. The European Commission investigation further established that the Netherlands had allowed Starbucks a choice of transfer-pricing methodology that is not appropriate for calculation of taxable profits under market conditions. The Government of Netherlands is obliged to recover the assessed tax under European Union law, subject to a different ruling of the EU courts.

Both the Government of Netherlands and Starbucks as State aid beneficiary appealed the Commission decision citing 'unprecedented criteria in establishing State aid'. The pending cases are registered under T-760/15 *Netherlands v Commission*, and T-636/16 *Starbucks BV and Starbucks Manufacturing EMEA v Commission*.

European Parliament PANA Committee of Inquiry to discuss studies in tax evasion

The European Parliament PANA Committee of Inquiry into tax evasion and tax avoidance practices that might be in contravention of EU law will hear on Thursday 27 April the findings of three studies that the European Parliament had commissioned. The Committee will sit in two panels which are scheduled to discuss, respectively, the impact of the offshore money-laundering and tax evasion practices on EU Member states' exchequers and public finances, and, the assessment on the performance of Member states' taxation and judicial administrations in addressing the issues stemming from the tax evasion, tax avoidance and money laundering practices.

The Report titled 'The Impact of Schemes revealed by Panama Papers on the Economy and Finances of a Sample of Member States' can be accessed here, while the report on the administrative cooperation titled 'Fighting Tax Crimes- Cooperation between Financial Intelligence Units- Ex Post Impact Assessment' can be read here.

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