CFE's Tax Top 5

Key tax news of the week

08 May 2017

1. Commissioner Moscovici confirms details of upcoming EU proposal on 'intermediaries'

The European Parliament "PANA" Committee of Inquiry held on Thursday 4 May a public hearing with Pierre Moscovici, EU Commissioner for Economic and Financial Affairs, Taxation and Customs Union. EU Commissioner Moscovici discussed the details of the upcoming EU legislative proposal on disincentives for intermediaries of aggressive tax planning schemes, the forthcoming EU blacklist of non-cooperative jurisdictions for tax purposes and the recent exchanges between the European Commission and the administration of President Trump.

Speaking to the Members of the European Parliament and the Committee of Inquiry, Commissionaire Moscovici said that he expects the legislative proposal from the Commission by June, with measures that would be 'wide-ranging and tough'. Mr Moscovici also confirmed that the Commission is considering a legislative proposal, rather than a 'soft-law' instrument such as Code of conduct, which would include 'all intermediaries, and would cover all harmful practices and all jurisdictions'. On a question from the French MEP Eva Joly regarding the possibility of including criminal sanctions in the forthcoming European Commission proposal, Commissioner Moscovici did not confirm if the legislative proposal would entail sanctions. In respect of this policy initiative of the European Commission, CFE adopted an Opinion Statement PAC/FC 1/2017.

The next public hearing of the 'PANA' Committee of Inquiry is scheduled for Tuesday 9 May on the cooperation in tax matters with European jurisdictions, with representatives of the Channel islands, Gibraltar and Madeira discussing their tax regimes and their commitments in the fight against money laundering, tax evasion and tax avoidance.

2. EU to extend Code of Conduct group harmful tax competition criteria

As reported by Bloomberg, the European Union is moving to close down special tax incentives zones within the EU, with the Code of Conduct Group on Business Taxation tasked to implement the harmful tax competition criteria. The document leaked from the Maltese presidency of the Council of the EU, and cited by Bloomberg, follows on the November 2016 Council compromise on the blacklist of non-cooperative jurisdictions for tax purposes. The final blacklist should be established by the end of year, according to the European Commission.

According to the Bloomberg report, the criteria that the Maltese Council presidency listed to initiate an inquiry for harmful tax competition by the Code of Conduct group include: tax benefits for companies in an economic zone that favour dealings with non-resident entities, regulations that do not require 'real and substantial' activity or substantial economic presence, tax benefits for highly mobile income, such as income from intra-group services, as well as activities limited to holding of equity participation or earning divides or capital gains. Bloomberg also cites reports that the European Commission will proceed with guidelines based on EU State aid law in case the Member states fail to end the 'abuse' of tax privileges in the free economic zones.

3. European Commission publishes monthly EU law infringements package

The European Commission published its monthly infringements package, which summaries the legal actions taken by the European Commission against Member states that fail to comply with their obligations under European Union law. In April, the European Commission adopted 4 letters of formal notice, 45 reasoned opinions, 11 referrals to the Court of Justice of the European Union, and 2 closures. In respect of the tax infringement cases, the Commission referred Italy to the Court of Justice of the EU for failing to apply the national excise duty on petrol and diesel purchased by residents of the Friuli Venezia Giulia Region. The reduced rate currently operated by Italy for the Venezia Region residents is considered by the Commission to be infringing the proper functioning of the EU internal market. These regional reductions, which according to the Commission have led to 'fuel tourism' are considered to be in breach of the EU Energy Taxation Directive/ Council Directive 2003/96/EC.

4. OECD launches disclosure facility for CRS avoidance schemes

The OECD launched on 5 May a facility to disclose reportable tax avoidance schemes under the Common Reporting Standards ('CRS'). According to the OECD, the disclosure facility is part of a wider three step process that the OECD has implemented to deal with reportable schemes under the CRS. The scope of the facility is wide, and covers financial institutions, the information to be reported and the scope of the account holders subject to reporting. The disclosure facility also requires jurisdictions to implement anti-abuse rules to prevent any practices that may circumvent the reporting the due diligence process. The disclosure facility is launched on the OECD Automatic Exchange Portal and allows interested parties to report potential schemes that circumvent the CRS. The disclosure facility can be accessed at the OECD CRS portal.

5. OECD releases CbC reporting implementation status

With regards to the BEPS Action Point 13 (Country-by-Country Reporting), the OECD reported on 4 May that another step was taken in the implementation of the CbC minimum standard through activation of the automatic exchange relationships under the Multilateral Competent Authority Agreement on the Exchange of Reports. At the moment, more than 700 automatic exchange relationships have been established, including those between EU member states under the Council Directive 2016/881/EU. The

OECD will publish regular updates on exchange relationships on their website to provide clarity for MNE groups and tax authorities.

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