CFE's Tax Top 5

Key tax news of the week

7 August 2017

Platform for Tax Collaboration invites comments on draft toolkit on the taxation of offshore assets

The Platform for Tax Collaboration, a joint initiative of the United Nations, the World Bank Group, the IMF and the OECD invites comments on a draft toolkit designed to help developing countries in the taxation of offshore indirect transfer of assets. With an aim of releasing the final toolkit by the end of 2017, the Platform expects comments and public feedback from interested stakeholder by 25 September 2017, by email to taxcollaborationplatform@worldbank.org.

The draft toolkit 'Taxation of Offshore Indirect Assets Transfers' identifies the principles that guide the taxation of sales of entities located in one country that owns immovable property located in another. The taxation of these transactions is of particular importance for developing countries but it was not addressed with the OECD Base Erosion and Profit Shifting Project. The toolkit addresses in particular the taxation of the underlying assets in relation to the extracting industries in developing countries, and the current standards under the OECD and the UN Model Tax Conventions, as well as the new Multilateral instrument. The work complements projects that have already been undertaken in increasing the capacity of developing countries to design their tax policies and to apply the OECD/ G20 BEPS principles.

EU Commissioner Vestager welcomes legislative changes on tax treatment of financing companies

EU Commissioner responsible for Competition Margrethe Vestager welcomed changes introduced by the Cypriot government for more stringent tax treatment of financing companies. The Commission has expressed concerns that Member states' tax ruling practices for financing companies endorse very low margins and artificially lowered taxable bases, which is in breach of the EU State aid rules. The changes made by the Cypriot government follow similar changes introduced by Luxembourg in January 2017, also welcomed by the European Commission earlier this year.

The changes to the Luxembourg legislation (Circulaire 164/2 bis) and article 56bis of the Luxembourg Income Tax Act reshape the transfer-pricing framework for companies carrying out financing activities in Luxembourg. The Circulaire provides for additional guidance in terms of substance and incorporation of the arm's length principle for intra-group financing activities in line with the OECD Transfer-Pricing Guidelines.

On the same subject matter, the Commission has already closed the case of Fiat Finance and Trade, where it established that Fiat Finance paid tax on a portion of its actual accounting capital at a low remuneration. The Commission's assessment showed that in the case of Fiat Finance and Trade, if the applied estimations of capital and remuneration had corresponded to market conditions, the taxable profits declared in Luxembourg would have been 20 times higher. The case is under appeal at the Court of Justice of the EU.

Commission requires Belgium and France to abolish corporate tax exemption for ports

The European Commission decided that corporate tax exemptions granted to Belgian and French ports provide them with a selective advantage, in breach of the EU state aid rules. In particular, the tax exemptions do not pursue a clear objective of public interest, such as the promotion of mobility. The tax savings generated this way by the port operators may be used to fund any type of activity or to subsidise the prices charged by the ports to customers, to the detriment of competitors and fair competition.

The two European Commission decisions make clear that if port operators generate profits from economic activities these should be taxed under the corporate tax law provisions to avoid distortions of competition.

Since the corporate tax exemption for ports already existed before the accession of France and Belgium to the EU, these measures are considered as "existing State aid" and the European Commission cannot ask Belgium and France to recover the aid already granted. Belgium and France now have until the end of 2017 to take the necessary steps to remove the tax exemption in order to ensure that, from 1 January 2018, all ports are subject to the same corporate taxation rules as other companies.

The non-confidential versions of these decisions will be made available under the case numbers SA.38393 (Belgian ports) and SA.38398 (French ports) once any confidentiality issues have been resolved.

UK will not be a tax haven after Brexit, says Chancellor of the Exchequer

In an interview with *Le Monde* published last weekend, Philip Hammond, the UK Chancellor of the Exchequer, denied claims that the UK Government plans a 'race a to the bottom' with corporation tax rates with the rest of the EU. The UK does not plan to change the economic model as part of government's Brexit policy, rather a very close trade relationship with the EU, avoiding any unnecessary disturbances. Mr Hammond also suggested a transitional period after 2019, which will be 'off-the-shelf' model creating predictable regulatory environment in the transitional period after the UK has formally left the EU.

'I often hear it said that the UK is considering participating in unfair competition in regulation and tax. That is neither our plan nor our vision for the future. I would expect us to remain a country with social, economic and cultural model that is recognisably European', Mr Hammond said for *Le Monde*.

Philip Hammond added that the amount of taxes that the government raises as a percentage of the GDP puts the UK in the middle of the pack and the UK does not plan to change that even after the country has left the European Union.

UK's tax take as a share of GDP is the 15th highest of the 28 EU Member states, according to Eurostat.

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