CFE's Tax Top 5

Key tax news of the week

Brussels, 11 September 2017

Estonian presidency to propose EU rules for a 'virtual Permanent Establishment'

The Estonian presidency of the Council of the European Union will propose amendments of the definition and concept of Permanent Establishment ('PE'). The document that had been leaked and was reported by Reuters should be discussed at the informal meeting of the European finance ministers on 15 – 16 September in Tallinn, Estonia.

Under the Estonian presidency proposal, the income of multinational companies shall be taxed in the countries where the value is created, rather than on basis of tax residency rules. The concept of 'virtual' PE would establish taxable presence for multinational companies in the countries in which they operate. Virtual PE would be considered a sufficient taxable presence in jurisdiction for the purposes of levying corporate income tax.

This EU proposal comes in time where the OECD too announced that the PE definition in the context of BEPS Action 1 and the taxation of tech groups is open for discussion. This proposal is coupled with the recent EU initiatives to revive the CCTB/ CCCTB proposals for corporate taxation based on formulary apportionment in Europe.

The Estonian presidency is mindful of the ambitious nature of this proposal and will therefore approach other EU member states informally next weekend. In case of common agreement, the proposal could be formalised at the ECOFIN Council meeting in December.

EU to consider taxing US tech groups on basis of turnover

The agenda of the informal EU finance ministers meeting in Estonia is likely to see another ambitious proposal for corporate taxation of US tech groups in the European Union, according to the Financial Times. The proposal initiated by the French side considers taxation of tech companies in Europe on basis of their turnover in a particular EU jurisdiction. The so-called 'equalisation tax' for tech companies would mean significant change to present rules, where companies are taxed based on profits, rather than revenue or turnover.

The outline drafted by the France and Germany further reads: 'The amounts raised would aim to reflect some of what these companies should be paying in terms of corporate tax." Financial Times reports French official claiming that such a turnover tax, even levied at low percentage, has the potential to raise revenues of magnitude much higher than any EU government has been able to levy so far on basis of corporation tax.

OECD issued updated Guidance on BEPS Action 13: Country-by-Country Reporting

OECD has updated its Guidance on the implementation of BEPS Action 13: Country-by-Country Reporting. The update from the BEPS inclusive framework includes the issues relating to the definition of items reported in the template for the Country-by-Country Report ('CbC Report'), ie. the definition of revenues, issues related to the amount of income tax accrued and income tax paid, and, issues relating to the filing obligation for the CbC Report in respect of short accounting periods.

By way of background, OECD BEPS Action 13 Report introduced a three-tiered approach to transfer pricing documentation, consisting of a master file containing standardised information relevant for all members of a multinational group; a local file referring specifically to material transactions of the local taxpayer; and a CbC Report containing certain information relating to the global allocation of the group's income and taxes, together with indicators of the location of economic activity within the group. Where CbC Reporting applies, the ultimate parent entity of a group with annual consolidated group revenue equal to or higher than EUR 750 million (or near equivalent in domestic currency as of January 2015) in the preceding fiscal year is required to file a CbC Report on behalf of the group with its local tax authority. The deadline for filing the CbC Report is by no later than 12 months after the last day of the group's reporting fiscal year. The tax authority with which the CbC Report is filed will exchange the CbC Report with the tax authority in other jurisdictions where the group has operations, under bilateral or multilateral tax treaties or tax information exchange agreements (TIEAs) that permit the automatic exchange of information. Countries have now moved to implementation phase.

OECD to publish the 2017 Tax Policy Report on 13 September

Pascal Saint-Amans, the OECD Director of the Centre for Tax Policy and Administration, will present the key findings of the OECD 2017 Tax Policy Report on Wednesday 13 September. The presentation will be available live at 15,00 on the following link.

The new *Tax Policy Reforms 2017 – OECD and Selected Partner Economies* provides comparative analysis on the tax reforms that were implemented, legislated or announced in 2016 in the 35 OECD countries, as well as in Argentina and South Africa. It follows reforms concerning personal income tax, social security contributions, corporate income tax, value-added tax and general sales tax, excise duties, environmental taxes and property taxes across countries and also tracks tax policy trends in these areas over time.

EU loses Boeing tax subsidies WTO case

The United States has won a tax subsidies dispute with the European Union, as the dispute settlement panel reverses a previous decision that declared US tax subsidies to Boeing illegal under the WTO rules. The 13-year dispute concerns allegedly illegal State aid provided by the US state of Washington to Boeing for the manufacturing of Boeing's newest airplane Boeing 777X. Under the ruling, the previous decision of the dispute settlement panel that prohibits certain subsidised was now reclassified from the previous designation of 'prohibited subsidies'. The WTO judges ruled last year that the $ 1 billion State aid from the state of Washington for a factory that will build world's largest carbon fibre wings for the 777X aircraft was illegal. This decision has now been reversed with the dispute settlement panel deciding that the State aid cannot be classified as prohibited aid as it did not explicitly affect targeted trade flows under the WTO trade rules.

If the obliged parties do not comply with the WTO panel decisions, the other party can impose counter-measures. The litigation is likely to continue until both parties decide to settle.

CFE General Assembly, Committee Meetings and Events in Bratislava 21 – 23 September 2017

With summer holidays now behind us, CFE and the Slovak Chambers of Tax Advisers (SKDP) are ready to host the delegates who registered to attend CFE's autumn meetings and events in Bratislava from 21 – 23 September. The Professional Affairs Committee and the Executive Board meet on 21 September, the Fiscal Committee meetings take place on 21 and 22 September and the General Assembly on 22 September. Further information for delegates is available on the following link.

*****

The selection of the remitted material has been prepared by
Piergiorgio Valente / Aleksandar Ivanovski / Mary Dineen / Filipa Correia

Follow CFE on LinkedIn and Twitter