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

Brussels, 16 October 2017

1. Council adopted the EU Double Taxation Dispute Resolution Directive

The Council of the European Union (ECOFIN) adopted last week a directive introducing a new system for resolving double taxation disputes between member states. The directive strengthens the mechanisms for resolving disputes among member states that arise from the interpretation of double taxation conventions. The directive follows on an agreement in Council on 23 May 2017.

The CFE welcomed the Commission's proposals to expand and improve the mechanisms available to Member States to resolve double taxation disputes with the introduction of a Council Directive. The CFE has also commented on this matter in the context of the OECD BEPS consultation process, in January 2015 and April 20162 and in response to the 2016 EU Commission Public Consultation entitled "Consultation on Improving Double Taxation Dispute Resolution Mechanisms".

Taxation of the 'digital economy'

The EU Commission presented a communication on taxation of the 'digital economy' at the last ECOFIN Council meeting of the EU finance ministers. The Estonian presidency also reported on an EU summit on digital issues held in Tallinn on 29 September 2017, and presented next steps regarding taxation of the digital economy, following a discussion by finance ministers on 16 September 2017 at an informal meeting in Tallinn. Conclusions will be prepared for the Council's meeting on 5 December 2017 as an input for discussions by the OECD and the spring 2018 G20 finance ministers meeting. These are expected to reflect the member states' views on how to ensure fair taxation of the digital economy.

2. EESC urges for cautious approach on CCCTB

The European Economic and Social Committee, a consultative body of the European Union which links the EU institutions and civil society, adopted an Opinion on the European Commission Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) and the Proposal for a Council Directive on a Common Corporate Tax Base.

The EESC endorsed Commission's proposals and recommended taking into account country-specific sensitivities in line with the principles of subsidiarity and state sovereignty. The Committee urges a fast introduction of stage two, once an agreement on the issue of common base has been reached, as companies will benefit the most from consolidation as soon as this has been achieved. Commission's proposal aims at a two-speed approach, with consolidation (CCCTB) coming in stage two of the process. The Committee further underlined that taxation by

way of a formulary apportionment would achieve objectives of the EU Single Market and will more effectively tackle aggressive tax planning, by way of allocating income where value is created.

The Committee's Opinion recommends that Commission and Member states re-evaluate the exclusion of intellectual property (IP) from the formulary apportionment, effectively re-examining the apportionment formula under the CCCTB proposal. According to the Committee, the debt-equity bias is properly addressed under the proposal. Conversely, the Committee expressed concerns that the operation of the proposed sales key will result in smaller exporting Member States losing taxable income to the larger and more consuming Member States. The Committed opined that the proposal should aim for an equitable formula that avoids systematically unbalanced effect. Finally, the Committee urged the Commission to address the need for flexibility for Member states and companies and to ensure all are able to respond to changing economic circumstances.

3. BEPS Action 13: Further steps in CbCR implementation

Progress has been noted by the OECD in the implementation of the BEPS Action 13: Country-by-Country Reporting, which was agreed as a minimum standard. Further steps in the CbCR implementation were achieved through activation of automatic exchange relationships under the Multilateral Competent Authority Agreement on the Exchange of CbC Reports. According to the OECD, as of October 2017 over 1000 automatic exchange relationships have now been established among jurisdictions committed to exchanging CbC Reports as of mid-2018, including those between EU Member States under the EU Directive 2016/881/EU. It is expected that more jurisdictions will nominate partners with which they will undertake the automatic exchange of CbC Reports under the CbC MCAA in the coming weeks. In addition, the United States has now signed 27 bilateral competent authority agreements for the exchange of CbC Reports under Double Tax Conventions or Tax Information Exchange Agreements, with more under negotiation.

For the all bilateral exchange relationships that are currently in place for the automatic exchange of CbC reports please refer to the following link.

4. VAT E-Learning modules available on the European Commission website

In order to help tax officials in EU countries and others with a particular interest in VAT get a more in-depth knowledge of the VAT rules, the European Commission, DG Taxation and Customs Union published E-Learning courses on VAT. The VAT E-Learning programme consists of 12 individual courses, which are available in 15 European languages in addition to English: Bulgarian, Dutch, German, Greek, Italian, Hungarian, Latvian, Lithuanian, Macedonian, Polish, Romanian, Slovenian, Spanish and Swedish.

The European Commission published last week a comprehensive proposal aimed at adopting a definitive VAT system for intra-EU cross border trade based on the "destination principle", i.e. taxation in the Member State of destination of the goods. The definitive VAT system shall replace the transitional VAT system of 1993, which is no longer fit for purpose in today's more dynamic

and highly digitalised economy. The VAT package was presented at the agenda of the last ECOFIN Council meeting

The change to a destination-principled VAT system will substantially impact all businesses trading in the EU Single Market. The Commission have now proposed the first step in implementing the definitive VAT system. Under a destination-based VAT system, the supplier shall be liable for VAT at a rate applicable in the Member state of destination. Goods traded cross-border will be taxed in the country where they are consumed (the destination country) and at the destination country's tax rate, rather than where they are produced (the origin country). Under the proposal, the supplier will be obliged to account for VAT at the rate applicable in the destination Member State.

The suppliers will not be required to register in the destination Member State for purposes of VAT, but can avail of the 'one-stop-shop' digital portal. By means of the 'one-stop-shop' portal businesses will be able to file declarations and declare VAT on cross-border transactions in a single return and the same rules and the language of their state of establishment. Member states will accordingly settle their VAT that is due directly.

Under the current rules, B2B cross-border supply of goods is exempt from VAT, in the sense that the transaction is split between an exempt intra-EU supply of goods in the Member state of origin, and, a taxable intra-EU acquisition in the Member state of destination. This design of the VAT system amounted to substantial revenue losses, with the VAT gap estimated at *cca* 50 billion per year. The Commission thus propose introduction of a single taxable supply in the member state of destination.

5. EU and UK engage with the WTO on certain post-Brexit trade terms

The European Union and the United Kingdom sent a joint letter to the members of the World Trade Organisation (WTO), setting out their intended approach to WTO trade-related issues arising from the United Kingdom's withdrawal from the European Union. According to the European Commission, the joint letter results from the constructive dialogue between the UK and the EU over the past months, covering issues such as trade in goods, services and government procurement.

The negotiations, as outlined in the Council's negotiating directives, aim to ensure that the UK honours its international obligations in respect of the WTO trade while a member of the EU, and to secure an orderly withdrawal from the organisation.

In accordance with the WTO rules, once the UK has left the EU, the country will have a separate schedules of commitments that indicate the maximum tariff rates applied to each specific type of imported product. Additionally, the schedules set the quantities of each product that can be imported in the UK duty-free or with a duty discount, known as tariff-rate quotas. The dialogue addresses both the EU's and the UK's commitments regarding these quotas. The letter states that both the UK and the EU aim to ensure that following UK's departure, WTO members retain the same level of access as they enjoy now, whilst following a common approach regarding the ceilings on domestic subsidies.

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