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

Brussels, 23 October 2017

1. **EU leaders discuss taxation & digital economy at EU Summit**

On Thursday 19 October EU leaders discussed the proposals to more effectively tax the digital economy in Europe. In Council Conclusions the leaders encouraged the Council to "*pursue its examination of the Commission communication on this issue*" and concluded by stating that it "*looks forward to appropriate Commission proposals by early 2018*". It is reported that Ireland and Luxembourg expressed strong objections to EU measures, advocating instead for a global uniform approach to be adopted at OECD level.

The discussion follows intense focus on the digital economy in recent time with the publication of a letter by France, Germany Italy and Spain and subsequently signed by 6 more EU Member States calling on the European Commission to explore options and "*propose any effective solutions based on the concept of establishing a so-called "equalisation tax" on the turnover generated in Europe by the digital companies*,"

In addition, the European Commission recently issued a publication with proposals of certain short and long term measures to more effectively tax the digital economy. The European Commission published its communication to the European Parliament and Council entitled, 'A fair and Efficient tax System in the European Union for the Digital Single Market'.

The Communication provides detailed analysis of the digitalisation, its growing impact on the economy, and new business models emerging in the digital economy.

The Communication identifies two main long-term policy challenges when seeking to tax the digital economy, and also proposes three short-term solutions.

2. **Pascal Saint-Amans confirms expected publication of interim report on tax challenges of digitalised economy for April 2018 whilst confirming focus of OECD still on long-term solutions**

Mr. Sant-Amans stated that there has been no fundamental change in the attitude of OECD members on this topic and the position remains that the OECD taskforce on digital economy should focus on the long-term solution beginning with an identification and examination of the business models and an analysis of the implications of the existing framework on these models. In particular, the analysis will examine the fundamental question as to where value is created, what should be taxed where should it be taxed. He identified this as the fundamental work stream which may drive countries to agree long-term solutions.

He reiterated that there remains agreement that short-term solutions are not necessarily good ideas but acknowledged that certain countries are under significant pressure to be seen to be acting. He stated that on 1 November the digital taskforce will have to explore these proposed short-term actions and conclude on how best to design such solutions by way of presenting what should not be done. It is hoped that this approach will limit disruptions as much as possible in the event some countries do act unilaterally.

3. **OECD Publishes BEPS Action 5 2017 Progress Reports on preferential tax regimes**

The OECD has recently published an update of the progress on the peer reviews being carried out pursuant to BEPS Action 5 Report. The report contains consolidated results of an examination of 164 preferential tax regimes which have been reviewed since the 2015 BEPS Action 5 Report was published.

BEPS Action 5 contains two elements – firstly preferential tax regimes and secondly the spontaneous exchange of information on certain tax rulings. All 102 members of the BEPS Inclusive Framework have committed to ensuring that any regimes offered satisfy the criteria that have been agreed as part of BEPS Action 5. Many of the IP regimes now satisfy the nexus approach; only 1 regime remains unreformed although found to be "actually harmful".
Of the 164 regimes subject to review in the past 12 months the report identifies:

? 99 regimes require action
? Out of these 99 regimes, 93 have initiated or competed the required changes
? 56 regimes do not pose a BEPS risk; and
? 9 regimes are still under review due to the extenuating circumstances in the Caribbean region as a result of hurricanes.

Jurisdictions that have been found to have regimes containing harmful features must make the necessary adjustments as soon as possible or by October 2018 at the latest. The governments of each identified country has pledged to carry out the necessary amendments, except for France and Italy.

4. **PANA Inquiry approves final report**

The Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion (PANA) approved its final report by 47 votes to 2 with 6 abstentions on Wednesday. The report is a result of an 18-month investigation into breaches of EU law in relation to money laundering, tax avoidance and evasion.

As part of the investigation, the PANA Committee held a series of public hearings and evidence gathering sessions in first half of the year. As a round-up of the work already done, the Committee published a draft Report in June 2017alongside draft Recommendations to Council and the Commission, drafted by MEPs Jeppe Kofod and Petr Ježek.
The Report identifies potential contraventions to EU law stemming from various revelations, in particular concerning offshore structures, non-cooperative jurisdictions, money-laundering, intermediaries, banks, trusts and cooperation of third countries with Brussels for tax transparency purposes.

The Report calls on the Council and Commission to design new rules that will regulate intermediaries comprehensively across the EU, with a shift from self-regulation to independent national regulator. A shift to regulation, according to the draft-report, will incentivise the tax intermediaries to refrain from engaging in a tax evasion and tax avoidance, and shielding beneficial owners. MEPs also called for sanctions and compulsory Codes of Conduct for intermediaries

5. **OECD Updated Model Convention & Commentary expected to be available online before end of the year**

The 2017 update of the Model Tax Convention is expected to be published online before the end of the year, with paper publication due in early 2018. The 2017 update will include all treaty-related BEOS measures to both the Model treaty and the associated commentary. It will also include several changes to the Commentary relating to the new definition of permanent establishment and the tiebreaker rule.

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