CFE's Tax Top 5

Key tax news of the week

Brussels, 30 October 2017

1. **European Parliament calls for EU-wide protection of whistle-blowers**

The European Parliament adopted on 24 October a non-legislative resolution calling for a European Commission proposal by the end of the year for EU- wide horizontal rules for protection of whistle-blowers. The non-legislative resolution was passed by 399 votes to 101, with 166 abstentions. The MEPs emphasised that European citizens and journalists are being subject to prosecution rather than legal protection when disclosing information in the public interest, including information on suspected misconduct, wrongdoing, fraud or illegal activity, particularly when it comes to conduct violating 'fundamental principles of the EU, such as tax avoidance, tax evasion and money laundering'.

In relation to taxation, the resolution draws from the conclusions of the TAXE and TAX2 Committees which have already called for better protection of whistle-blowers across the EU. Furthermore, the European Parliament called on the Commission to look into possibilities that international agreements that concern taxation, competition and financial services to include provisions on the protection of whistle-blowers.

The Parliament calls on the EU member states to introduce reporting mechanisms that facilitate internal whistle-blowing and allow whistle-blowers to report to NGOs or the press, including the possibility of anonymous reporting, protection against retaliation, and sanctions against those attempting to prevent whistle-blowers from speaking out. The resolution further calls on measures to discourage the retaliatory actions, allowing supporting measures, such as legal and financial aid, psychological support and compensation for damage suffered by whistle-blowers in the event of civil proceedings, and national independent bodies, responsible for reports, verifying their credibility and guiding whistle-blowers and an EU level authority, to facilitate coordination in cross-border cases.

The adopted non-legislative resolution concerning whistle-blowers' protection is available in all EU languages.

2. **EU Commission open State aid investigation into UK's CFC rules**

The European Commission Directorate General for Competition have opened an investigation into UK's Controlled Foreign Company (CFC) legislation compatibility with the EU State aid rules.

Specifically, the Commission are looking into UK's group financing exemption for certain financing income (ie. loan interest payments) that are exempt from the remit of the CFC rules.

CFC Rules

CFC rules are an anti-tax avoidance measure that aims to tax profits of parent company that are artificially shifted to offshore low-taxed or no-tax subsidiary for tax purposes. CFC rules operate by providing legal powers to a national tax authority to catch such artificially shifted profits of the off-shore shell back to the parent's jurisdiction where these will be subject to tax.

UK Group Financing Exemption

The Commission is investigating a legislative scheme, the UK's Finance Act 2012 which introduced a Group Financing Exemption, effective from 1 January 2013. This scheme exempts from UK corporate taxation financing income received by an off-shore subsidiary from another foreign group company, which allows a UK based multinational company to provide for financing to a CFC group member via an offshore shell without taxing this income. In the absence of the Group Financing Exemption, interest income paid on loans to subsidiaries when that interest is paid into an off-shore jurisdiction would have been subject to tax.

The UK would ordinarily be able to tax such interest income, as the CFC rules would catch it by disregarding the offshore company and allocating such income to the UK parent. This possibility provided with the UK Group Financing Exemption, according to the EU Commission, is providing for selective advantage to multinational group companies when compared with other UK resident entities that do not operate cross-border. According to ECJ settled case-law, national anti-abuse provisions must not be selective and must be compliant with the State aid rules still. The Commission rely on the interpretation of the UK general corporate tax as reference system, under which standalone and multinational group companies are in a comparable factual and legal situation for purposes of corporate tax as per the *Paint-Graphos* case-law.

ATAD

In accordance with the EU Anti-Tax Avoidance Directive, as of 1 January 2019, all Member states must introduce CFC legislation, albeit with the caveat that the ATAD does not intend a group financing exemption such as the one under Commission's State aid investigation.

Interested third parties can now submit comments without prejudice of the outcome of this case.

3. EESC calls for tax good governance clauses in international agreements

The EESC published an Opinion on the EU development partnerships and the challenge posed by international tax agreements. EESC welcomed the EU efforts to address the weaknesses of the international tax systems calling for tax policy to play a more important role in the European development policy. The EESC argues that EU Member States need to align their international taxation policies with the objectives of development policies in order to avoid conflicts between individual countries' taxation policies and joint development priorities. Furthermore, the Committee called on including tax good governance clauses in all relevant agreements between the EU and third countries and regions in order to promote sustainable development. EU international tax transparency measures and the BEPS Action Plan will also have an impact on developing countries. The EESC welcomed the fact that the European Parliament and the European Commission have already issued their views on the points where tax and development policies intersect, ie. toolbox presented on the platform as a Staff Working Document on the "spillover" effects of DTCs.

4**. OECD published VAT effective cross-border collection implementation guidance**

The implementation guidance responds to the request from the Fourth Meeting of the OECD Global Forum on VAT supporting the implementation of the International VAT/GST Guidelines, including a first package on the implementation of mechanisms for the collection of VAT on internet sales. It focuses on the implementation of the recommended approaches included in the 2015 Final Report on Action 1 "Addressing the Tax Challenges of the Digital Economy" of the BEPS project. These recommended approaches, which are also included in the International VAT/GST Guidelines, have already been implemented by a large number of countries. The implementation guidance builds on good practice approaches deployed by jurisdictions when they require foreign suppliers to register and collect VAT on cross-border B2C sales in application of the solutions recommended in the BEPS Action 1 report.

5. November tax events and seminars update

CFE Professional Affairs Conference on 24 November in Prague, Czech Republic

CFE and the Czech Chamber of Tax Advisers (KDPCR) are delighted to invite you to the 10^{th} Professional Affairs Conference *'Tax is Going Digital – Are Tax Advisers Ready?'* We hope that you will join us on 24 November 2017 in Prague, the Czech Republic as we discuss digitalisation of tax services, opportunities for the tax profession arising therefrom and the evolution of artificial intelligence.

Please follow this link for further information on the programme, registration, accommodation and social programme details.

Accountancy Europe is hosting ATO seminar on GST (VAT) on 13 November

Accountancy Europe is hosting on 13 November in Brussels the Australian Tax Office (ATO) information seminar on the goods and services tax (GST) law changes that apply from 1 July 2018 to low value imported goods sold to consumers in Australia. The Australian Taxation Office (ATO) is organising a series of business information seminars in key locations around the world. The international sessions are designed for online marketplaces, merchants and re-deliverers that supply these goods, and also for advisers and tax professionals.

Please follow this link for registration and further information on this seminar.

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