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

Brussels, 27 November 2017

1. OECD approves the 2017 update to the Model Tax Convention

On 21 November 2017, the OECD Council approved the contents of the 2017 Update to the OECD Model Tax Convention. The 2017 OECD Model Tax Convention ("MTC") updated incorporates changes to the MTC arising from the BEPS project. The approved changes concern amendments to the Commentary on Article 1 (Persons covered) on "Improper use of the Convention", and a new Article 29 (Entitlement to Benefits), which includes a limitation-on-benefits (LOB) rule, an anti-abuse rule for PEs situated in third countries, and a principal purposes test (PPT) rule. These changes were contained in the Action 6 Report (preventing granting treaty benefits in inappropriate circumstances).

Further changes include Article 5 (Permanent establishment) and the Commentary resulting from the follow-up work on Action 7; changes to Article 25 (Mutual agreement procedure) and to the Commentaries on Articles 2, 7, 9 and 25 contained in Action 14. Also, changes related to the OECD MTC MAP arbitration provision and its Commentary are intended to reflect the MAP arbitration provision developed in the negotiation of the MLI adopted earlier this year.

The 2017 Update, which was previously approved by the Committee on Fiscal Affairs on 28 September 2017, will be incorporated in a revised version of the OECD MTC that will be published in the next few months.

2. Vestager: EU will act on digital taxation if OECD fails to do so

The European Union will take measures on the taxation of the technology companies in absence of a coordinated international response by spring next year, EU Competition Commissioner Margrethe Vestager said on 21 November, as reported by Euractive.

Last month, the European Commission launched a public consultation on the taxation of the digital economy. According to Vestager, the Commission would use the results of this consultation in negotiations being held under the auspices of the OECD. Vestager warned that "if there's no international answer to this issue by spring next year, we will produce our own proposal for new EU rules to make sure tech companies are taxed fairly."

The European Economic and Social Committee ("EESC") published recently an analysis (available in all EU languages) of the various tax policy choices in relation to the taxation of the collaborative economy. The Opinion clearly distinguishes between the digitalised economy, the collaborative ('gig') economy and the platform economy on basis of their differing scope and degree of inclusiveness. The EESC considers important to assess the policy choices related to the taxation of the collaborative economy in its entirety, rather than aligning such policy options fully with the ones made about the taxation of the digitalised economy. It is suggested in this Opinion that the European Union must not miss out on an opportunity provided by the collaborative economy to bring and facilitate innovation. The EESC stresses the extent to which such policy choices bear on the systemic relations between business, investment and markets. It is further suggested that the collaborative economy should not be ring-fenced from the rest of the economy. Albeit calling for a unified European approach regarding the taxation of the digital economy in general, the EESC Opinion stresses that the existing framework of tax rules and principles should be adapted to new situations arising in the collaborative economy, in order to ensure consistent treatment of all economic operators, irrespective of the format of their activities, digital or traditional.

Discussions on the taxation of the digitalised economy within the EU are expected at the forthcoming ECOFIN Council meeting on 5 December.

3. UK Government set out details of tax policy in Autumn Budget

The Chancellor of Exchequer Philip Hammond announced the Autumn Budget 2017, alongside an overview of tax legislation and rates, a document that sets out the details of the tax policy measures of the Autumn Budget.

In respect of corporate taxation, the Budget announcement includes changes related to taxation of capital gains and royalties, hybrid mismatches and the corporate indexation allowance. The UK plans to amend the Substantial Shareholding Exemption legislation and the Share Reconstruction rules, in order to avoid unintended chargeable gains being triggered where a UK company incorporates foreign branch assets in exchange for shares in an overseas company.

With effect from April 2019, withholding tax obligations will be extended to royalty payments, and payments for certain other rights, made to low or no tax jurisdictions in connection with sales to UK customers. The rules will apply regardless of where the payer is located. Some aspects of the corporation tax rules which apply to arrangements involving hybrid structures and instruments, the mismatch arising from differences in tax treatment between two jurisdictions, will be amended to clarify how and when the rules apply, and to ensure that the rules operate as intended.

With respect to corporate taxation and the digital economy, alongside Budget, the UK government has published a position paper discussing the challenges posed by the digital economy for the international corporate tax framework and its proposed approach for addressing those challenges. The UK government will push for reforms to the international tax framework, to ensure that the value created by the participation of users in certain digital businesses is recognised in determining where those businesses' profits are subject to tax.

However, the UK is ready to take unilateral action in the absence of sufficient progress on multilateral solutions, by exploring interim options to raise revenue from digital businesses that generate value from UK users, such as a tax on revenues that these businesses derive from the UK market.

The Finance Bill 2017-18 will be published on 1 December 2017.

4. OECD published MAP statistics for 2016

As part of the efforts to enhance tax certainty and to improve the effectiveness of the dispute resolution mechanisms, BEPS Action 14 required from jurisdictions to seek to resolve mutual agreement procedure ("MAP") cases within 24 months, as a minimum standard. To monitor compliance with this obligation, members of the Inclusive Framework on BEPS have committed to report their MAP statistics pursuant to an agreed reporting framework, as a tangible measure of the effects of the collective implementation of some elements of the Action 14 minimum standard and now includes data from over 65 jurisdictions.

To this end, the OECD has made available the MAP statistics for the 2016 reporting period.

5. European Commission launches 'Taxlandia', tax educational portal for youngsters

The European Commission has launched a new education portal for young people that is aiming to teach them about tax in a fun and interactive way. TaxEdu is a digital resource to educate children about the purpose of taxes and how they affect their daily life. It also gives information on tax compliance and the negative effects of tax fraud on society. The portal is full of multilingual e-learning tools for different age groups, games, videos and educational material for teachers to use in schools.

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