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

Brussels, 4 December 2017

1. European Commission publishes new rules to improve the VAT System by making it more resilient to fraud and closing loopholes which create VAT fraud.

On 30 November, the European Commission published a draft Regulation to strengthen administrative cooperation between the tax authorities of Member States. It seeks to amend Regulation (904/2010) regarding measures to strengthen administrative co-operation in the field of VAT.

The legislative initiative seeks to swiftly improve how tax authorities cooperate not only with each other but also with other law enforcement bodies across the EU. It comes in preparation for the full implementation of the definitive VAT regime and follows on from the proposal of fundamental cornerstones of the new system as published in October.

The primary elements of the proposal seek to :

Strengthen cooperation between Member States by putting in place an online system for information sharing within 'Eurofisc', the EU's existing network of anti-fraud experts. The system would enable Member States to process, analyse and audit data on cross-border activity to make sure that risk can be assessed as quickly and accurately as possible. To boost the capacity of Member States to check cross-border supplies, joint audits would allow officials from two or more national tax authorities to form a single audit team to combat fraud - especially important for cases of fraud in the e-commerce sector. New powers would also be given to Eurofisc to coordinate cross-border investigations.

Increase interaction with other law enforcement bodies by opening new lines of communication and data exchange between tax authorities and European law enforcement bodies on cross-border activities suspected of leading to VAT fraud: OLAF, Europol and the newly created European Public Prosecutor Office (EPPO). Cooperation with European bodies would allow for the national information to be cross-checked with criminal records, databases and other information held by Europol and OLAF, in order to identify the real perpetrators of fraud and their networks.

Share key information on imports from outside the EU by further improving information sharing between tax and customs authorities for certain customs procedures which are currently open to VAT fraud. Under a special procedure, goods that arrive from outside the EU with a final destination of one Member State can arrive into the EU via another Member State and transit onwards VAT-free. VAT is then only charged when the goods reach their final destination. This feature of the EU's VAT system aims to facilitate trade for honest companies, but can be abused to divert goods to the black market and circumvent the payment of VAT altogether. Under the new rules information on incoming goods would be shared and cooperation strengthened between tax and customs authorities in all Member States.

Share information on motor vehicles In order to tackle fraud, in relation to trading in cars new measures will seek to allow Eurofisc officials access to car registration data from other Member States.

The Proposed Regulation is available here.

2. European list of non-cooperative jurisdictions to be approved by European Finance Ministers this week.

Approval is expected to be reached at tomorrow's ECOFIN meeting on the list being prepared of non-cooperative tax jurisdictions. The list is being compiled in parallel with the OECD global forum on transparency and exchange of information for tax purposes. The list has been prepared by the Working Group responsible for implementing the EU code of conduct on business taxation.

ECOFIN previously agreed on the process for making the list in November 2016, setting end of 2017 as the deadline for the conclusion of the list. The list will be formulated based on criteria:

- that a jurisdiction should fulfil to be considered compliant on tax transparency;
- that a jurisdiction should fulfil to be considered compliant on fair taxation; and
- related to the implementation of anti-BEPS measures agreed by the OECD.

3. ECOFIN Meeting to take place Tuesday 5 December – EU Blacklist, Digital tax and VAT on the Agenda

A very important ECOFIN will take place tomorrow, Tuesday 5 December. As outlined above it is expected that the EU blacklist of non-cooperative tax jurisdictions will be agreed upon.

In addition, from a digital tax perspective, it is hoped to agree Council Conclusions on an approach to the taxation of the digital economy with a view to discussions at an international level. An OECD interim report on the taxation of the Digital Economy is due to be published in Spring, but the European Commission is also currently conducting its own public consultation on the fair taxation of digital economy, in addition to the publication of a paper outline possible legislative solutions and proposing possible legislative intervention in Spring 2018.

Finally, in the field of VAT, it is expected that proposals in the area of e-commerce will be passed enabling SMEs to more easily comply with their VAT obligations. The proposals were agreed by all Member States apart from one at the previous ECOFIN meeting. This issue with one Member State has now been resolved and therefore agreement is expected without any discussion at tomorrow's meeting.

The new rules extend an existing EU-wide portal (mini 'one-stop shop') for the VAT registration of distance sales and for distance sales from third countries with a value under €150. VAT will be paid in the Member State of the consumer, ensuring a fairer distribution of tax revenues. In addition, the European Commission will present the proposals outlined above for tackling VAT fraud by increasing administrative cooperation between Member States.

4. The OECD publishes further guidance on country-by-country reporting

The OECD has published more detailed guidance on the implementation of country-by-country reporting in order to increase certainty for both tax administrations and MNE groups. The additional guidance addresses a number of specific issues:

- how to report amounts taken from financial statements prepared using fair value accounting;
- how to treat a negative figure for accumulated earnings in Table 1;
- how to treat mergers/acquisitions/de-mergers;
- how to treat short accounting periods; and
- how to treat the definition of total consolidated group revenue.

The additional guidance is available here.

5. The OECD publishes first peer reviews on BEPS Action 5 on spontaneous exchange of tax rulings

The OECD has released the first peer reviews of progress made by individual countries in spontaneously exchanging information on tax rulings in accordance with BEPS Action 5. The first reports evaluates 44 countries, including all OECD members and the G20 countries.

The Report is available here.

DATE FOR THE DIARY

26 January – VAT FORUM – University of Economics Prague.

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