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

Brussels, 26 March 2018

European Commission Publishes Digital Economy Taxation Proposals

The European Commission has published the long-anticipated proposals on taxation of the digital economy in the Single Market and Recommendation on amending Member states' Double Tax Treaties with Third Countries. The proposals largely correspond with previously seen early drafts. The Directive on Digital Services Tax ("DST") proposes to implement a short term interim turnover tax on digital businesses, whilst the proposal for an EU Directive on significant digital presence, ie. Digital permanent establishment ("PE") seeks to introduce EU-wide long-term measures that redefine the concepts of permanent establishment and profit allocation to account for users' contribution as a proxy for value creation.

- **Interim Measures/ Directive on DST:** The draft interim measure proposes a turnover tax to be levied at 3% on the aggregated gross revenue of businesses with global revenue above €750 million and annual EU revenue above €50 million, with no deduction of costs, to apply to revenue made from targeted advertising based on user data collection and digital intermediation services of making available digital marketplaces.

- **Long-term Measures/ Digital PE:** The long-term measures propose revision of corporate taxation concepts of permanent establishment and profit allocation to account for digital activities. The directive proposes that the definition of permanent establishment should include a "significant digital presence". A digital PE will be established when a platform either exceeds an annual turnover of €7 million, or has more than 100,000 users in a Member State in a taxable year, or has over 3,000 contracts for the provision of digital services in a taxable year, that would amount to a Digital PE.

- **Recommendations relating to Double Tax Treaties:** The third proposal in the EU digital taxation package sets out recommendations to Member states to renegotiate and adapt their double tax treaties with 3rd countries (non-EU) by way of extending the scope of the PE concept to include significant digital presence (digital PE) through which the business of an enterprise is wholly or partly carried out.

Tax policy proposals at EU level require unanimity per the EU treaties to become European Union law.

MLI To Enter Into Force in July

In a significant milestone for the BEPS project, the OECD announced that the BEPS multilateral tax treaty instrument ("MLI") will enter into force on 1 July 2018. This follows from the deposit of the fifth instrument of ratification by Slovenia. The other ratifying countries are Austria, the Isle of Man, Jersey and Poland.

The multilateral tax treaty allows jurisdictions to update their existing double tax treaties and transpose measures agreed in the BEPS project without further need for bilateral negotiations. OECD Secretary-General Angel Gurria stated "the entry into force of this multilateral convention marks a turning point in the implementation of OECD/G20 efforts to adapt international tax rules to the 21st Century".

EU Commission Publishes "Blacklist" Countermeasure Guidelines

On 21 March, the Commission published guidelines identifying countermeasures for the movement of EU funds through countries identified as non-cooperative tax jurisdictions. The guidelines detail the relevant legislation concerning transfers of EU monies in relation to non-cooperative jurisdictions, and provides a framework for assessing the risks of tax avoidance in projects involving entities in these jurisdictions. The legislation requires that EU funds do not support projects which contribute to tax avoidance, and that funding is routing according to good governance taxation standards.

"The Commission will not allow EU funds to contribute to global tax avoidance. These EU level countermeasures should act as a wake-up call for those jurisdictions as they show the EU is serious about tackling tax avoidance on a global scale." Commissioner Pierre Moscovici said of the guidelines in the Commission press release.

Nine countries now remain on the "blacklist": American Samoa, Bahamas, Guam, Namibia, Palau, Samoa, Saint Kitts and Nevis, Trinidad and Tobago and the US Virgin Islands.

OECD Releases Report on Profit Attribution to Permanent Establishments

Following on from BEPS Action 7 and the changes made to Article 5 of the OECD Model Tax Convention, the OECD has now published a report setting out guidance on how profit attribution rules should apply to permanent establishments.

The guidance establishes high-level general principles concerning structures for sale of goods, online advertising and procurement, as well as guidance concerning permanent establishment and attributions of profits arising from anti-fragmentation rules.

CFE Forum "Fair Taxation of the Digital Economy" in Brussels on 19 April

CFE Tax Advisers Europe's Annual Forum will take place in Brussels on 19 April. The forum will focus on aspects of direct and indirect taxation of the digital economy, outlining and discussing EU Commission's proposal and the OECD Interim Report on the Taxation of the Digital Economy. Technical details of the recent EU proposals will be discussed by Maria Elena Scoppio, Head of VAT Unit and Bert Zuijdendorp, Head of Company Taxation Initiatives Unit, DG Taxation and Customs Union, European Commission. Register here!

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