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CFE's Tax Top 5

Key tax news of the week

Brussels, 28 May 2018

Council Formally Adopts the Mandatory Disclosure Rules Directive (DAC6)

At the ECOFIN meeting on 25 May 2018, the Council of the EU formally adopted the Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation the reportable cross-border arrangements. Political agreement was reached at the 13 March ECOFIN Council meeting on the directive, and since then a legal-linguistic revision took place before the document was ready for sign-off.

Member States will have until 31 December 2019 to implement the directive into national legislation, and disclosure requirements will apply from 1 July 2020. Intermediaries who design and/or promote reportable tax planning schemes will be required to disclose them to their national tax administrations, who will then automatically exchange the information with other Member States through a centralised database. Penalties will be imposed on intermediaries who do not comply with the new reporting measures. The initial automatic exchange of information between member states should take place on 31 October 2020.

The Directive shall enter into force 20 days following publication in the Official Journal of the European Union, which is expected in early June.

EU VAT Package Proposals

On 25 May, the European Commission published two proposals which it introduced as “the final technical measures to create a future fraud-proof EU VAT system” following on from its comprehensive proposal of 2017 and the initial introduction of the VAT Action Plan in 2016. The reform measures propose adopting a definitive VAT system for intra-EU cross border trade based on the “destination principle”, i.e. taxation in the Member State of the destination of the goods.

The two new proposed directives set out the technical revisions required to existing EU VAT legislation in order to give effect to the proposed comprehensive revisions, with the Commission stating that around 200 of the existing 408 articles of the VAT Directive will need to be amended.

The proposed directives concern the following matters:

1. Detailed technical measures for the operation of the definitive VAT system for the taxation of trade between Member States; and

2. the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud.

These amendments introduce provisions concerning the online VAT "One Stop Shop" portal for European business-to-business traders and companies outside the EU wanting to trade with EU businesses. The measures also introduce provisions such that unless a customer is a Certified Taxable Person, the seller will be responsible for charging VAT due on sales to customers in another EU Member State, at the rate due in that Member State.

These proposals follow on from prior proposals concerning the future of the EU VAT area and the Commission noted it hoped the new measures will further discussion on the "cornerstones" of a definitive EU VAT system.

UN Releases Updated Model Double Tax Treaty

The 2017 update of the United Nations Model Double Taxation Convention between Developed and Developing Countries was published online on the occasion of the 16th Session meeting of the Committee of Experts on International Cooperation in Tax Matters convened in New York from 14 to 17 May 2018. The updated Model Double Taxation Convention incorporates changes which were approved in April 2017 by the Committee.

In a progress note circulated ahead of the Committee Session concerning the updates to the Convention, the Secretariat noted that the 2017 update incorporates language contained in the Base Erosion and Profit Shifting Project of the OECD and G20, aimed at preventing improperly obtained treaty benefits. In particular, the Secretariat noted the update incorporates new anti-abuse rules and a revised preamble setting out that "tax conventions are not intended to create opportunities for tax avoidance or evasion".

Additionally, it was noted the update introduces an article which permits the imposition of a withholding tax relating to fees for technical services, identified in the note as a practice which increases source-based taxation.

OECD Releases First Peer Reviews on Action 13 of BEPS

The OECD has released peer reviews from the Country-by-Country reporting initiative which assess the legal and administrative framework and implementation of the OECD/G20 Base Erosion and Profit Shifting (BEPS) minimum standards of 95 Inclusive Framework jurisdictions as of January 2018.

The OECD reports that the 60 of the 95 countries reviewed where MNEs have headquarters have implemented reporting obligations for those MNEs that are in line with the requirements of the BEPS minimum standards. Pascal Saint-Amans, director of the OECD Centre for Tax Policy and Administration states "the peer review outcomes and the launch of the global exchange of CbC reports in June shows that the BEPS measures are being implemented rapidly, consistently and globally".

Country-by-Country reporting exchanges under the BEPS minimum standards are to begin in June 2018. The OECD reports there are more than 1400 bilateral relationships to which the reporting exchanges will apply; a number that will continue to grow.

This first peer review will be followed by two further annual reviews. The second review process began in April 2018 and will focus on the exchange of information aspect of Country-by-Country reporting.

EU List of Non-Cooperative Jurisdictions in Taxation Matters

The Bahamas and Saint Kitts and Nevis have been removed from the EU's list of non-cooperative jurisdictions in taxation matters aimed at promoting tax good governance and minimising tax avoidance. Following an assessment of commitments made to remedy EU concerns, the ECOFIN Council at its meeting on 25 May has now removed the two countries from the "blacklist". The Council noted that the commitments will be closely monitored.

Seven countries now remain on the list: American Samoa, Guam, Namibia, Palau, Samoa, Trinidad and Tobago and the US Virgin Islands.

Clarification Concerning CFE Tax Top 5 of 22 May 2018

In the previous edition of the Tax Top 5, CFE reported that Finland had introduced a bill in its Federal Parliament to implement aspects of the European Commission proposals concerning the concept of a digital permanent establishment. However, the text that CFE reported on was not in fact a legislative proposal, but rather a communication to the Parliament informing it of the details of the EU proposals. Thanks to our scrupulous readers this was acknowledged and clarified.

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