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EU Council Agree VAT Proposals

On 22 June the Council of the EU, at its Economic and Financial Affairs meeting, agreed the following VAT proposals:

- **Proposal for amending Council Regulation (EU) No 904/2010 as regards measures to strengthen administrative cooperation in the field of value added tax**

  This regulation forms part of the fair taxation package for the creation of a single EU value added tax area, as set out in the Commission roadmap. The regulation provides for Member States to increase the exchange of information and cooperation between their national tax authorities and law enforcement in order to tackle VAT fraud.

  More specifically, the Regulation provides for joint processing and analysis of relevant data with Eurofisc, improving the operational framework for coordinated checks between Member States, developing the exchange of data between tax administrations and law enforcement at EU level, and tackling VAT fraud involving dual VAT regimes by improving access to data.

  Once the European Parliament has delivered its opinion, the regulation will be adopted without further discussion.

- **Proposal to amend Directive 2006/112/EC on the common system of value added tax as regards the obligation to respect a minimum standard rate**

  This Directive sets a 15% minimum standard rate as a permanent feature of the new VAT system. The Directive is aimed at eliminating distortive competition that would occur with divergence in VAT rates in Member States, and the impact that would have on trade and cross-border supplies.

  The Directive was adopted without discussion, however discussions concerning replacing the transitional VAT system with a definitive new VAT regime as set out in Commission proposals published in January and May 2018 are ongoing.

OECD Releases Guidance on Intangibles and Profit Split Method Under BEPS Actions 8 & 10

The OECD has released two reports setting out guidance on the following matters: Guidance for Tax Administration on the Application of Approach to Hard-to-Value Intangibles under BEPS Action 8, and Revised Guidance on the Application of the Transactional Profit Split Method under BEPS Action 10.

An earlier OECD guidance report released in 2015 entitled Aligning Transfer Pricing Outcomes with Value Creation listed the above issues for future follow-up work, leading to the publication of this further guidance.

The first report sets out how tax administrations should apply adjustments of hard-to-value intangibles in order to reduce the risk of double taxation. The guidance includes an analysis of hard-to-value intangibles. The second report concerns the profit split method, and the guidance set out in the report has been incorporated into the Transfer Pricing Guidelines.

Additionally, on 21 June, Vanuatu became the 123rd country to sign the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters. 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, and aims to increase transparency and further efforts to reduce cross-border tax evasion.

3. EU Economic and Financial Affairs Council Approves European Semester Recommendations

The EU Economic and Financial Affairs Council, at its meeting on 22 June, approved draft recommendations for Member States' economic and fiscal policies arising from the 2018 European Semester reports policy monitoring process.

Key economic indicators that signify the existence of aggressive tax planning were examined as part of the Semester reports, and the Commission identified indicators as being present in Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and The Netherlands.

Country-specific recommendations and opinions pursuing structural reform and responsible fiscal policies were approved by the Council, and referred for endorsement by the European Council at its meeting on 28 and 29 June. The Council is expected to adopt the recommendations on 13 July 2018.

4. EU Commission Determines €120 Million in Illegal State Aid Granted by Luxembourg

The European Commission has determined that Luxembourg granted an undue advantage to two Engie group companies, Engie LNG Supply and Engie Treasury Management, by endorsing complex intra-company financing structures involving a triangular transaction between the companies and two other Engie group companies in Luxembourg. The Commission determined that tax rulings concerning the structures treated the same transaction in an inconsistent way, i.e. as both debt and equity, thereby reducing the company's tax burden, which did not reflect economic reality.

The ruling of the Commission comes following an investigation launched in 2016, one of a number of state aid investigations conducted by the Commission in Member States from 2013 onwards. Commissioner Margrethe Bestager said of the arrangements "Engie paid an effective corporate tax rate of 0.3% on certain profits in Luxembourg for about a decade. This selective tax treatment is illegal."

In accordance with EU state aid rules, the amount of illegal state aid must now be recovered by Luxembourg, with interest, to restore equality to competition in the industry.

EU Council Approves VAT Agreement with Norway

The Council of EU, at its Economic and Financial Affairs meeting on 22 June, approved an agreement with Norway to increase cooperation in the area of value added tax. The agreement was originally signed in February 2018 in Sofia, and establishes a legal framework for administrative cooperation between EU Members States and Norway in order to prevent VAT fraud and assist with the recovery process for VAT claims.

This is the first agreement to be concluded with a country outside of the EU in this field. The agreement will take the same structure as the agreement that is in place between Member States, including access to electronic platforms and forms.