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ECOFIN Agenda & Tax Policy Progress Report

The Council of the EU will discuss the working programme of the Austrian EU presidency at the next ECOFIN meeting scheduled for 13 July. Ministers are also expected to discuss the progress on the VAT reverse charge mechanism.

The Council of EU has also published the Tax Policy progress report, which provides a round-up of the tax policy achievements under the Bulgarian EU presidency, focusing in particular on the Directive on Mandatory Disclosure Rules (DAC6), taxation of the digital economy and the VAT reform.

EU State Aid Investigation Into Madeira Tax Exemptions

The European Commission has opened an investigation regarding the compliance with the European State aid rules of a Portuguese tax exemption scheme for the region of Madeira. Portugal has granted tax exemptions to companies operating in Madeira to remedy the higher costs of doing business in this underdeveloped region of the European Union.

Under EU law, in particular the General Block Exemption Regulation (GBER) and the Regional Aid Guidelines, Member states are permitted to do so, under certain conditions. The Commission investigation shall now focus on verifying that the operating aid in the form a tax exemption granted to these companies complies with the EU law on State aid, and in particular earlier European Commission decisions, which did not raise objections to this type of tax exemption.

EU Commissioner Margrethe Vestager, responsible for competition policy, said: "Our regional aid rules are particularly flexible when it comes to supporting the EU's outermost regions, including Madeira. Under these rules, fiscal aid can only be granted if it contributes to the creation of real economic activity and jobs in the assisted region. We will now investigate whether the Zona Franca Madeira fiscal aid scheme approved by the Commission in the past has been applied correctly by Portugal."

OECD Seeks Input on Intra-Group Transfer-Pricing Rules

The OECD has published on 3 July a discussion draft on financial transactions, that provides guidance on transfer-pricing with respect to intra-group loans and intra-group financial transactions. This discussion draft has been produced as a follow-up to the work already undertaken under Actions 8-10 of the BEPS Action Plan ("Aligning Transfer Pricing Outcomes with Value Creation") by OECD's Working Party No. 6.

The first part of the discussion draft provides guidance on the application of the principles contained in Chapter I of the Transfer Pricing Guidelines to financial transactions. The second part of the discussion draft addresses specific issues related to the pricing of financial transactions such as treasury function, intra-group loans, cash pooling, hedging, guarantees and captive insurance. The discussion draft also includes a number of questions to commentators on which inputs from stakeholders will be particularly relevant to Working Party 6 to complement its work and prepare another discussion draft after considering the input received.

The OECD invites interested parties to submit comments on this discussion draft by 7 September 2018.

4. UK Businesses Disclose Financing Structures in Scope of EU State Aid Investigation

Bloomberg has reported that the UK businesses affected by the EU State aid investigation into the UK CFC rules group financing exemption, have disclosed their financing structures. In regulatory filings, both FTSE 100 telecommunications business Vodafone Group Plc and media company Daily Mail have identified Luxembourg as location of their inter-group financing structures affected by the European Commission's State aid tax investigation.

Since October 2017, the European Commission has been investigating the features of the UK CFC rules, in particular the Group Financing Exemption, a legislative scheme that exempts from UK corporate taxation certain group financing income. This possibility provided with the Group Financing Exemption, according to the EU Commission, amounts to a selective advantage for multinational group companies when compared with other UK resident entities that do not operate cross-border. According to ECJ settled case-law, national anti-abuse provisions must not be selective. The Commission rely on interpretation of the UK general corporate tax as reference system, under which standalone and multinational group companies are deemed in a comparable factual and legal situation for purposes of State aid tax scrutiny, as per ECJ case-law.

EU's Anti-Tax Avoidance Directive (ATAD), as of 1 January 2019, will require from EU Member states to introduce some form of CFC rules, albeit with the caveat that the ATAD does not intend a group financing exemption such as the one under Commission's State aid investigation.

5. Croatian Chamber of Tax Advisers Tax Summer School in Dubrovnik

The Croatian Chamber of Tax Advisers (HKPS) is organising its first tax summer school in Dubrovnik, Croatia, entitled 'Trends in International Taxation'. The summer school will take place from 10 – 14 September at the University of Dubrovnik, and is designed for tax advisors and professionals from accounting companies, business and tax administrations, young practitioners and academic.

Full-time students and students engaged as teaching or research assistants at universities may apply for a fee waiver.