CFE tax advisers europe
CFE's Global Tax Top 5
Round-up of international tax policy news
DECEMBER 2017 N°.0
AOTCA Asia Oceania Tax Consultants' Association
WEST AFRICAN UNION OF TAX INS

1. Global tax transparency developments: 'Paradise Papers'

Back in November 2017 the International Consortium of Investigative Journalists ("ICIJ") revealed documents related to off-shore activities of individuals and companies named "Paradise Leaks". The disclosures contained information related to tax avoidance schemes employed by multinational companies such as Apple, Nike and Facebook. Irrespective of the legality of the revealed tax optimisation strategies, the general public was yet again informed about fund flows into off-shore structures, use of off-shore trusts for tax planning purposes, companies incorporated in secrecy jurisdictions, entities that hold assets and investments in shares and stocks as well as private individuals shielding their identity. 14.4 million files were obtained by the German newspaper *Süddeutsche Zeitung*, and subsequently shared with ICIJ, BBC and the *Guardian*. The 'Paradise Papers' leaks came as world's second biggest data leak with 1.4 TB of data, preceded only by the "Panama Papers" in 2016 amounting to 2.6 TB. The "LuxLeaks" files of 2014 amounted to 4.4 GB of tax rulings from Luxembourg.

Simultaneously with these public disclosures, new transparency initiatives at global and EU level have emerged, including an EU Parliament's Committee of Inquiry of contraventions to EU law, new beneficial ownership transparency requirements, as well as policy initiatives for mandatory disclosure of aggressive tax avoidance schemes at both EU and OECD level. The Bulgarian EU presidency is expected to prioritise the EU directive on mandatory disclosure of cross-border aggressive tax planning schemes in the second quarter of 2018.

2. OECD & EU move-forward on mandatory disclosure rules

The OECD on the other hand is seeking input on a consultation document concerning model mandatory disclosure rules. This consultation follows on the OECD BEPS Action 12, which indeed envisaged introduction of mandatory disclosure rules, albeit not as a minimum standard. The model rules are supposedly intended to target promoters and intermediaries involved in the design, marketing or implementation of the common reporting standards (CRS) avoidance arrangements or offshore structures. The proposed rules contemplate that information on those schemes (including the identity of any user or beneficial owner) would then be made available to the domestic and other tax authorities in accordance with the requirements of the applicable information exchange agreements.

3. EU: From State Aid Investigations to global tax good governance standards

Global tax certainty challenges for international businesses include the EU's competition regulator & enforcement body (DG Competition) State aid investigations into multinational companies' tax arrangements with EU governments. The inquiry into tax rulings was at least partly initiated on basis of 'market information' contained in the "LuxLeaks" revelations. Ireland recouped the assessed back taxes worth €13 billion in an escrow account, under threat of litigation at the EU courts for non-compliance with EU ruling. Other open investigations at the moment include IKEA, Amazon and McDonald's. It will up to the EU Courts to confirm the viability of EU's interpretation of international tax concepts, such as the 'arm's length principle'.

With an aim to promote fair tax competition and global tax transparency standards, the EU approved a list of non-cooperative jurisdiction for tax purposes this December. The list includes 17 countries that are failing to meet European tax good governance standards: American Samoa, Bahrain, Barbados, Grenada, Guam, Korea (Republic of), Macao, Marshall Islands, Mongolia, Namibia, Palau, Panama, Saint Lucia, Samoa, Trinidad and Tobago, Tunisia and the United Arab Emirates. The first European list is part of the EU's efforts to promote tax good governance, to dissuade external threats to EU Member states' tax bases and to address standards of third countries that refuse to cooperate in tax matters.

The EU listing criteria included transparency, BEPS implementation and commitment to fair tax competition. In addition, 47 countries have been 'grey' listed, and have committed to addressing the deficiencies in their tax systems and to meet the required criteria, following a dialogue with the EU. In order to ensure compliance with the EU measures, the EU has designed defensive measures in tax area could be taken by the Member States. Such actions include:

- Non-deductibility of costs;
- CFC rules;
- Withholding tax;
- Limitation of participation exemption;
- Switch-over rule;
- Reversal of the burden of proof;
- Special documentation requirements;
- Mandatory disclosure of specific tax schemes with respect to cross-border arrangements.

In reaction to the EU 'blacklist', the governments of South Korea, Macau, Mongolia, Tunisia, Namibia and Panama condemned this EU action. Panama recalled its ambassador to the EU, whilst other countries denounced the EU measures as "unfair, arbitrary and discriminatory". In this global display of divergent understanding of tax transparency, Korea's finance ministry added that the European Union is not in a position to impose its tax standards on countries like South Korea.

4. US Tax Reform Bill (Tax Cuts & Jobs Act)

The highly controversial US Tax Reform Bill has been passed by both the Congress and the Senate in the United States. Two separate versions of the Bill were passed previously so work has been carried out on merging and consolidating the text of the Bill.

The Bill will cut the headline corporation tax rate in the U.S. from 35 to 21% and see the U.S. move to a territorial tax system. This transition to a territorial system will be facilitated by a full dividend exemption for dividends of non-US companies (with a 10% holding requirement). As part of the transition to the territorial system a once off deemed repatriation tax will be imposed on existing earnings held outside the U.S. The once-off levy will be imposed at a rate of 15.5% on cash and 8% for non-cash assets.

Other fundamental changes include the introduction of the following concepts:

- "Global Intangible Low Taxed Income" (GILTI)– This effectively constitutes a minimum tax being imposed on the certain foreign earnings of US multinationals in excess of a specified amount based on the standard rate of return of the foreign company's assets.
- Foreign – derived intangible income (FDII) – This is akin to a patent box.
- Base Erosion Anti-Abuse Tax (BEAT) – This will impose an alternative effective minimum tax targeting excessive intra-group payments to off-shore group companies, such as excessive royalty payments.
- New rules on the treatment of hybrids.

It is anticipated that the new corporation tax rate will be applicable from 1 January 2018.

5. OECD Publishes Updated Edition of the Model Tax Convention

On 18 December, the OECD published the latest edition of the OECD Model Tax Convention. The updated version incorporates the changes from the various BEPS Reports by consolidating the work done on the following actions:

- Action 2 – Neutralising the effects of hybrid mismatch arrangements
- Action 6 – Preventing the granting of Treaty Benefits in inappropriate circumstances
- Action 7 – Preventing the artificial avoidance of PE status
- Action 14 – Making Dispute Resolution more effective.

The publication is used by countries concluding bilateral tax conventions as the basis for negotiation.

****

CFE's Global Tax Top 5 *is edited by Piergiorgio Valente*
The selection of the remitted material is prepared by
Aleksandar Ivanovski/ Mary Dineen/ Filipa Correia / Piergiorgio Valente/
Stella Raventós-Calvo / Wim Gohres

Follow CFE on [LinkedIn]() *and* [*Twitter*]()