



22 February 2016

1. CFE Forum 2016: "Rebuilding the international tax system: How to square the circle?" on 21 April

The finalisation of the BEPS project has provided governments with materials, tools and blueprints for reapplying the basic principles of international taxation like economic substance, permanent establishment and value creation. Yet it is far from clear how this large-scale project should be implemented: how to shape the new provisions so that they are fit for purpose? How can the implementation effort be coordinated internationally and achieve its political objectives? And how can one assure that the reconstruction does not lose sight of the taxpayers who are going to be subject to this new regime? It will be crucial for both companies and tax authorities to clearly understand the concepts, and how they interact, in order to ensure that reasonable transactions are not deemed to be abusive.

Where traditional concepts are revised and tax rulings are under pressure, new ways of creating legal certainty and ensuring confidentiality must be explored.

- Programme and registration: [EN](#)

2. Improving double taxation dispute resolution mechanisms: Commission opens consultation

On 16 February 2016, the European Commission has opened a public consultation on improving double taxation dispute resolution mechanisms. The consultation takes the form of an electronic multiple choice questionnaire with very limited possibilities to add comments, but there is a possibility to attach position papers.

Key question is question 4.2 where the Commission explains four possible options:

- a soft law mechanism to encourage member states to revise their treaties to include a dispute resolution mechanism in the light of the experience from the Arbitration Convention and the BEPS 14 recommendations, including an arbitration clause;
- a soft law mechanism to encourage member states to introduce in their treaties a provision that gives the EU Court of Justice jurisdiction to decide on a double tax case, after lapse of a specified time period;
- a binding measure obliging member states to provide access to binding arbitration or mediation by another body, after lapse of a specified time period, e.g. two years;
- a comprehensive EU law instrument providing for elimination of double taxation and a dispute resolution mechanism.

Deadline for responses is 10 May 2016.

- Consultation website: [EN](#) (DE FR available)

3. Advocate General: Corrections to VAT invoices should have retrospective effect

On 17 February 2016, EU Court of Justice Advocate General Yves Bot delivered his opinion in the German preliminary ruling case C-518/14, Senatex, about the effect of corrections to VAT invoices.

The case concerns a company that reclaimed VAT on commission statements from its sales representatives and other invoices, but the claims had not been based on valid VAT invoices. Tax authorities found that the original claims were invalid and input tax could only be reinstated once the corrected invoices were made available. The Advocate-General suggested that the correction should retrospectively validate the original claims, arguing that the invalidity of the original claims resulting in the imposition of interest, as in the case at issue, was disproportionate. This however should not prevent tax authorities from penalising non-compliance with VAT invoicing requirements.

- Advocate-General Opinion, 17.2.2016 : [EN \(All EU languages\)](#)

4. EU Council discussions: Anti-Tax Avoidance proposal and Interest & Royalties Directive

Reportedly, German Minister of Finance Wolfgang Schäuble suggested that the EU Anti-Tax Avoidance Directive proposal of 28 January 2016 should be split into one part limited to implementing the OECD's BEPS recommendations, as they have already been endorsed at OECD/G20 level, and a second covering the remaining issues, namely content that was previously part of the CCCTB discussions like the GAAR, the switchover clause and the exit taxation provision, to ensure a swift adoption of the BEPS-related matters.

As to the Interest & Royalties Directive, it has been reported that the Dutch Council presidency which aims at advancing the revision of the Directive has proposed in the Council that the minimum effective taxation in the country of the beneficiary of a payment should be at an effective rate of 10%, irrespective of what the rate in the source country is.

5. OECD conducts business survey on cost of irrecoverable VAT

The OECD has opened a survey to assess how VAT/GST refund procedures work in practice, i.e. where laws on VAT/GST recovery in jurisdictions where a business is not established do not work as they should and what the magnitude of costs of irrecoverable VAT/GST is. Deadline for responses is 15 March 2016.

- Link to the survey: [EN](#)

6. US Treasury publishes revised US Model Tax Convention

On 17 February 2016, the US Treasury Department issued a newly revised US Model Income Tax Convention which is the baseline text the Treasury Department uses when it negotiates tax treaties.

As the Treasury explained, the 2016 Model includes a number of provisions intended to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance.

For example, the 2016 Model does not reduce withholding taxes on payments of highly mobile income such as royalties and interest that are made to related persons that enjoy low or no taxation with respect to that income under a preferential tax regime. In addition, a new article obligates the treaty partners to consult with a view to amending the treaty as necessary when changes in the domestic law of a treaty partner draw into question the treaty's original balance of negotiated benefits and the need for the treaty to reduce double taxation. The 2016 Model also includes measures to reduce the tax benefits of corporate inversions. Specifically, it denies reduced withholding taxes on U.S. source payments made by companies that engage in inversions to related foreign persons.

The 2016 Model also contains rules requiring that tax treaty disputes be resolved through mandatory binding arbitration, taking the "last best offer" approach.

A detailed technical explanation of the 2016 Model is planned in spring 2016.

- US Model Convention 2016: [EN](#)
- Press release, 17.2.2016 : [EN](#)

7. Commission updates list of VAT cross-border rulings

On 16 February 2016, the European Commission has updated its list of (to date 17) VAT cross-border rulings resulting from the project the Commission started with member states in 2013 and that is currently scheduled to last until September 2018. To date, 18 EU member states (Belgium, Denmark, Ireland, Estonia, Spain, France, Italy, Cyprus, Latvia, Lithuania, Malta, Hungary, Netherlands, Portugal, Slovenia, Finland, Sweden and the United Kingdom) have agreed to take part in the project.

- Updated VAT cross-border rulings list (until January 2016): [EN](#)
- Information notice with list of member states participating: [All EU languages](#)

The selection of the remitted material has been prepared by Piergiorgio Valente / Filipa Correia / Rudolf Reibel

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