CFE's Tax Top 5
Key tax news of the week

**12 September 2016**

**1. G20 ask OECD to present list of non-cooperative jurisdictions by July 2017**

On 5 September 2016, the leaders of the G20 countries issued a communiqué concluding their summit in Hangzhou/China. Apart from commitments to implement BEPS actions and tax transparency, the statement endorses the criteria to identify non-cooperative jurisdictions proposed by the OECD and G20 earlier this year: According to these, a country´s assessment would depend on meeting the following benchmarks:

- A "largely compliant" rating in exchange of information on request,
- The commitment to start automatic exchange of information as of 2018, and
- Endorsement of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, or a similar framework providing standards for the former two criteria.

The OECD has been tasked to present by July 2017 a list of jurisdictions that have not sufficiently progressed towards of implementation of the standards. Defensive measures would be considered against these jurisdictions.

The G20 leaders were also provided with a report from the OECD giving an update on the current OECD work in the field of BEPS, tax transparency, tax policy and tax and development, including lists of countries participating in the various initiatives.

- G20 leaders Hangzhou communiqué, 5 September 2016: EN
- OECD Report to G20 leaders: EN

**2. Advocate-General: electronic publications may be exempt from reduced VAT rate**

On 8 September 2016, EU Court of Justice (CJEU) Advocate-General Kokott has issued her opinion in the preliminary ruling case RPO, C-390/15, brought before the Polish Constitutional Court by the Polish Civic Rights Ombudsman. The Advocate-General concluded that the exclusion of electronically provided books, periodicals and newspapers from the reduced VAT rate does not violate the EU´s principle of equal treatment.

The EU VAT Directive provides that printed publications as well as digital publications on a physical medium may be subject to a reduced VAT rate, but not publications provided purely electronically. According to Ms Kokott, the EU legislator has a certain discretion in this regard, and the fact that purely electronic products have significantly lower distribution costs is a significant difference upon which the different tax treatment may be based.

The provision in question has been under repeated attack lately: Luxembourg and France had disregarded the rule by applying a reduced rate on e-books, and lost before the CJEU in March 2015 (cases C-479 and 502/13). The Commission announced in May 2015 that it would consider abolishing the difference in treatment. Companies selling e-publications have long lobbied against a distinction between physically and electronically provided publications.

- Press release: EN (available in es de el fr it pl pt sl)
- Advocate-General Opinion, 8.9.2016: EN (All EU languages available)

**3. Commission estimates: VAT gap decreases only slightly**

According to the European Commission´s latest estimates released on 6 September 2016, the VAT gap, i.e. the difference between the VAT that EU member states could have collected and the amount actually collected in 2014, amounted to € 160 bn across the EU, or 14.1%. As in previous years, differences between member states are enormous, ranging from 1.2 % in Sweden to 37.9 % in Romania. The greatest amount of VAT was lost in Italy which accounts for 23% of the EU´s lost VAT. The relative size of the VAT gap decreased for the first time since 2011. However, although two thirds of member states have managed to improve their VAT collection since 2013, the overall decrease in VAT lost (€ 2.5 bn) remains modest. The Commission believes that just over 30% of the VAT gap is due to cross-border VAT fraud. Other factor include legal tax avoidance, insolvencies or miscalculation.

The “policy gap”, meaning the VAT uncollected due to member states´ decision to make use of certain policy options like exemptions or reduced rates, is not included in the figure of € 160 bn. It is bout three times higher than the VAT gap. The policy gap is highest in Spain (59%) and lowest in Malta (12.4)

- Press release: EN (All EU languages)
- Full report: EN

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

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