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

5 December 2016

1. European Commission proposes modernising VAT rules to support e-commerce and online business in the EU

On 1 December 2016 the European Commission published a series of measures aimed at improving the operation of VAT rules for online business in the EU. It is hoped that the new rules will simplify VAT Compliance, particularly for SMEs and encourage and accelerate growth for online business.

The new proposals essentially see an extension of the so-called 'one stop shop' which already exists for "e-sellers". This will enable companies that sell goods online to handle all of their EU wide VAT obligations through an online portal hosted by their domestic tax administration. Under this proposed new system for compliance online businesses will no longer be obliged to register for VAT in every Member State in which they sell goods but instead will make 1 simple quarterly for the VAT due across all the EU via the online VAT One Stop Shop portal hosted by the domestic tax administration of the business.

Other proposals include:

- The introduction of a threshold of 10,000 euro for goods and 100,000 euro for services under which cross-border sales for online companies will be treated as domestic goods and subject to domestic VAT rules.
- The removal of the current exemption from VAT for imports of small consignments from outside the EU (less than 20 euro) It is hoped that this proposal will curb unfair competition and distortion for EU companies.
- The reduction of VAT rates for e-publications such as e-books and online newspapers

For more information, please follow the following links.

- Factsheet
- Memo
- Press release

2. EU Council's Legal Service issues legal opinion that public country by country reporting is a taxation matter

In November 2016 the legal service of the Council of the European Union gave a written opinion concluding that the aim of the provisions relating to public country by country reporting ("CbCR") are in essence fiscal provisions, and therefore implementation requires unanimity from the members of the Council of the EU in order to conclude adoption of the measures.

The legal opinion is based on the conclusion that the aim of the proposed amendments to the "Accounting Directive" (otherwise known as public CbCR) is to deter tax avoidance and protect the interest of public administrations in combatting tax avoidance. Therefore, the purpose of these proposals is to protect the functioning of the internal market. Consequently, the legal basis for the proposals is not the protection of shareholders and the public pursuant to Article 50 TFEU (Freedom of establishment).

In order for the public CbCR proposals to be characterised a "tax file" by the EU Commission, Member States must unanimously request that the Commission do so, therefore the Legal Opinion alone has limited practical consequences without subsequent action.

In the event that the proposals are not characterised as a "tax file" but full implementation proceeds it is likely that the implementation would be successfully challenged before the EU Courts of Justice based on the Council's Legal Service written opinion.

As yet, member states are still assessing the situation.

3. European Commission publishes guidelines for a Model for European Taxpayers' Code

Following a 2013 consultation, the European Commission has published guidelines for a Model for European Taxpayers' Code. The guidelines aim to ensure a balance between the rights and obligations of both taxpayers and tax administrations. It is based on best practices which aim to enhance cooperation, trust and confidence between tax administrations and taxpayers ensuring greater transparency on the rights and obligations of both parties. It also seeks to encourage an improved service orientated approach by tax administrations.

It is envisaged to be a model for the European taxpayers and Member States' tax administrations rather than a template to follow as a strict code or charter. It is a non-binding (soft-law) EU instrument.

The guidelines for a Model for European Taxpayers' Code are available at the following Link

4. The OECD releases further BEPS guidance on Country-by-Country reporting and country-specific information on implementation

The Inclusive Framework on BEPS has today released two new documents to support the global implementation of Country-by-Country (CbC) reporting (BEPS Action 13).

The details on jurisdictions' legal frameworks for CbC reporting include the status of the legislation, first reporting periods, availability of surrogate filing and voluntary filing, and whether local filing can be required. This will be updated as Inclusive Framework members continue to finalise their legal frameworks.

The additional guidance also clarifies that jurisdictions have flexibility as to the time period required where a notification to the tax administration may be required to identify the reporting entity within a MNE Group (as provided in Article 3 of the Model Legislation in the Action 13 Report). This may be particularly relevant during the transition period where jurisdictions are still completing their implementation of CbC reporting, as MNE Groups may not yet have the necessary information to submit their notifications.

The guidance also confirms that jurisdictions may wish to consider other transitional relief for MNE Groups with respect to these notifications, which would also be consistent with the minimum standard.

For more information, follow this link

5. European Court of Justice gives judgment in SECIL Case (Case C-464/14); Portugal must grant company at least partial tax deduction for dividends received from Tunisian or Lebanese subsidiaries

The preliminary reference was made by the Lisbon tax court in a case involving a Portuguese tax resident company in receipt of dividend income from 2 third country subsidiaries in the 2009 tax year. This income was taxed in Portugal but did not receive any economic double taxation relief or mitigation. The taxpayer company brought proceedings against a refusal to apply a reverse charge of corporation tax relating to the 2009 tax year on the basis *inter alia* that it contravened Articles 49 and 63 TFEU and the EC-Tunisia Agreement and the EC-Lebanon Agreement.

The Court concluded a restriction to the free movement of capital existed because the law discouraged Portuguese resident companies from investing in shares of companies' resident outside the EU. This arose by virtue of the differential treatment applied to a Portuguese corporate shareholder who could avail of double tax deduction or mitigation measures in relation to dividends received from a domestic subsidiary but could not avail of any tax deduction or mitigation measures in respect of dividends received from a subsidiary resident outside the EU.

Consequently, the question therefore to be addressed was whether the restriction was justified. The Court held that the restriction may be justified if it ensured effective fiscal supervision and the prevention of tax evasion in circumstances where it would be impossible for the tax administration of the shareholder company to obtain information to verify that the payee subsidiary is subject to tax in the third country.

The Court held that where the tax authority of the Member State can obtain verification from the third country that the payee company is subject to tax this justification cannot be relied upon.

On the facts of this case, the Court held that the impugned measures contravened Articles 63 and 65 TFEU and the EC-Tunisia Agreement and the EC-Lebanon Agreement.

The full text of the judgement is available here: Judgment

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