



## NEW CFE PUBLICATIONS

- **EU Anti-Tax Avoidance Directive** [\[link\]](#)
  - Opinion Statement FC 3/2016 of 25 March, and
  - Opinion Release (key messages)
- **BEPS Final Recommendations** [\[link\]](#)
  - Opinion Statement FC 4/2016 of 1 April: overall statement on BEPS Final Recommendations, and
  - Opinion Statements FC 4a-4f/2016 of 1 April: statement on Final Recommendations on:
    - the digital economy (Action 1),
    - interest deductions and other financial payments (Action 4),
    - harmful tax practices, transparency and substance (Action 5),
    - transfer pricing and value creation (Actions 8-10),
    - mandatory disclosure rules (Action 12),
    - dispute resolution mechanisms (Action 14),
  - Opinion Releases (key messages)
    - BEPS General comments
    - Focus on compliance
    - BEPS Implementation concerns
- **A Fair Taxpayer Label**
  - Opinion Statement PAC 1/2016 on a Fair Taxpayer Label, 4 May 2016 [\[link\]](#)
- **VAT**
  - Opinion Statement FC 5/2016 on the VAT liability of directors [\[link\]](#)
  - Opinion Statement FC 7/2016 on the consequences of the CJEU judgment in case Facet on the right to VAT deduction [\[link\]](#)
- **EU dispute resolution mechanisms**
  - Opinion Statement FC 6/2016, 10 May 2016 [\[link\]](#)
- **Changes in national tax laws**
  - Fiscal Committee National Reports April 2016 [\[link\]](#)
  - 2 National news releases Italy: Changes in Italian tax law and VAT strategy in action: [\[link\]](#)
- **A Model Taxpayer Charter**

The Final Report “Towards more fairness in taxation: A Model Taxpayer Charter” is now available as a book, published by IBFD. [\[online version\]](#)
- **CFE Annual Report 2015** [\[link\]](#)

## CFE NEWS

### CFE appointed to Platform for Tax Good Governance

The CFE has been nominated for the second time as a member to the European Commission’s expert group “Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation”.

The Platform assists the Commission in developing initiatives to promote good governance in tax matters in third countries, to tackle aggressive tax planning and to identify and address double taxation. It gathers experts from all EU member states and 15 business, tax professional and civil society organisations. The Platform’s second term will end in June 2019.

The CFE will be represented by Piergiorgio Valente as main representative and Stella Raventos as alternate. A first meeting will take place on 14 June in Brussels.

#### READ MORE

- Commission website with list of all organisations selected: [EN](#)

## DIRECT TAX

### Council fails to reach agreement on ATAD

On 25 May 2016, the EU Ecofin Council discussed the European Commission’s Anti-Tax Avoidance Package of 28 January 2016.

On the proposal for an Anti-Tax Avoidance Directive (ATAD), the Dutch Council presidency had presented a new compromise proposal but no agreement could be reached. According to press reports, the switchover clause may be dropped in the course of negotiations; ministers also agreed, upon request of the UK, to request the Commission to put forward a more comprehensive proposal on hybrid mismatches by October. The next date for reaching political agreement on the proposal will be 17 June 2016.

The Council however adopted the proposal for country by country reporting to tax authorities and

the automatic exchange of the reports among these (see below, Tax Transparency).

The Council also adopted conclusions on two other parts of the Package: the two Communications on an external strategy for effective taxation, announcing a common EU methodology for blacklisting tax havens and developing measures against these, and the recommendation on tax treaty abuse and permanent establishments (PE).

Ministers agreed to draw up a common list of tax havens in 2017; criteria should be defined by September 2016, taking into account the work of the OECD Global Forum on cooperativeness of jurisdictions.

As regards treaty abuse and PE, the Council welcomed the proposed provisions with regard to a principal purpose test and permanent establishments to be included in bilateral tax treaties agreed by a member state, stressing that it also considers limitation on benefits clauses helpful.

## READ MORE

### Overall

- Press release, Outcome of the meeting: [EN](#): see ATAD on p.3
- Background briefing: [EN](#)
- EurActiv article: [EN](#)

### ATAD

- Latest Dutch presidency compromise proposal dated 24 May: [EN](#) (other languages: [link](#))
- General approach: [EN](#) (other languages: [link](#))

### External strategy for effective taxation, treaty abuse

- Council Conclusions: [EN](#)

## EP drafts ambitious opinion on ATAD

On 1 March 2016, the European Parliament tabled a draft report on the European Commission's proposal for an Anti-Tax Avoidance Directive. Rapporteur MEP Hugues Bayet (S&D/Belgium) suggested including further topics such as a definition of permanent establishment (including a purely digital presence which had been discarded by the OECD), rules on transfer pricing and a legislative framework for patent box regimes. The EP should even be given the right to call for an investigation if it is of the view that abuse takes place.

Concerning measures included in the Commission's proposal, the draft suggest stricter rules, among other:

- For the interest limitation rule, the EU should allow the deduction of exceeding borrowing costs only up to a maximum of 10% of the taxpayer's earnings (EBITDA), instead of 30%, limiting also the carry-forward of unused EBITDA.
- For the switch-over clause, the draft proposes including foreign low-taxed income also from other EU member states (not only third countries), and applying an effective corporate tax rate threshold of 25% (instead of 40% of the taxpayer's country tax rate) to define such low-taxed income.
- A 25% effective tax rate threshold is also suggested for the application of the CFC (controlled foreign companies) rule.
- Rules on hybrid mismatches should extent to third countries.
- EU member states should inform also the European Parliament on the implementation of the ATAD.

The proposal on the ATAD is subject to unanimity in the EU Council, while the EP's opinion has only consultative character. The plenary vote is scheduled for 8 June 2016.

## READ MORE

- Report tabled for plenary: [EN](#) (all EU languages)

## CJEU rules on Belgian tax on collective investment undertakings

On 26 May 2016, the EU Court of Justice (CJEU) rendered its judgment in the Belgian case *NN (L)* (C-48/15) on the taxation of an undertaking for collective investment (UCI) from Luxembourg that marketed units in Belgium. The Court found that Belgium could impose a tax on foreign UCI, if this tax is applied in a non-discriminatory way; the country did not have to take into account taxes paid by the UCI in Luxembourg. However, Belgium cannot prohibit foreign UCIs by court decision from marketing their units in Belgium if the UCI fails to comply with the obligation to pay the tax or to file the necessary declaration within a certain time period.

## READ MORE

- Judgment: [EN](#) (all EU languages)

- Advocate-General opinion : [EN](#) (all EU languages)

## **Greek inheritance tax exemption for primary residence may not be limited to residents**

On 26 May 2016, the CJEU issued its decision in the infringement case *Commission v. Greece* (C-244/15), confirming that Greece has breached the free movement of capital in EU and EEA law by granting an inheritance tax exemption for primary residence only to spouses and children which are EU citizens and reside in Greece.

### **READ MORE**

- Judgment: [EN](#) (all EU languages)

## **Luxembourg must issue deduction forms and give tax credit to persons receiving income from abroad**

On 26 May 2016, the CJEU gave its decision in the Luxembourgish preliminary ruling case *Charles Kohll* (C-300/15) concerning a pensioner who is resident and national of Luxembourg and receives pensions from the Netherlands; he was not granted a tax credit because as a person receiving a salary or a pension not subject to deduction at source, he did not receive the required tax deduction form. This treatment was found to infringe the free movement of workers under EU law.

### **READ MORE**

- Judgment: [EN](#) (all EU languages)
- Advocate-General opinion : [EN](#) (all EU languages)

## **Discriminatory taxation of legacies to foreign charities: Germany amends legislation**

Germany will change its tax law to allow donations to foreign charities the same inheritance tax treatment as donations to German charities. This commitment has led to the closing of an infringement proceeding against the country on 25

February 2016, as the Commission announced on 31 March.

Domestic charities have been granted an exemption from German inheritance tax, whereas similar charities established in other EU/EEA States only enjoyed this exemption if their state of residence granted an equivalent or reciprocal exemption to comparable German charities.

### **READ MORE**

- List of infringement cases: [EN](#) (FR, DE available)

## **CJEU: Freedom of establishment does not preclude notification obligation on inheritance tax**

On 14 April 2016, the EU Court of Justice decided in Case C-522/14 (*Sparkasse Allgäu*) on a German request for a preliminary ruling made in proceedings between a savings bank and the tax office concerning the refusal of the credit institution to disclose to the tax office information relating to the accounts held with its dependent branch in Austria by persons who, at the time of their death, had their place of residence for tax purposes in Germany.

The Court of Justice's ruling states that the freedom of establishment does not prevent a member state from requiring credit institutions having their head office in that member state to notify its authorities of assets held or managed at their dependent branches in another member state in the event of the death of the owner of those assets who is resident in the first member state, in the case where there is no similar notification obligation in that second member state and credit institutions there are subject to banking secrecy breach of which constitutes a criminal offence.

### **READ MORE**

- Judgment: [EN](#) (all EU languages available)

## **Advocate General's opinion on tax credits in EU and third country situations**

On 12 April 2016, CJEU Advocate General Kokott provided her opinion in the case *Riskin and Timmermans* Case C-176/15). The Court of First Instance of Liège (Belgium) had requested a preliminary ruling.

The case refers to the issue whether a member state may treat investment in companies from third countries more favourable than investment in companies from other member states.

The Advocate General concluded that the free movement of capital does not preclude national legislation which, because of an obligation arising from a double tax agreement with a third state, generally credits withholding tax withheld by a third state on dividends from companies established in that state with the advance tax levied on those dividends at national level from their resident shareholders, whereas, in the case of dividends paid by companies established in another member state, it makes that credit subject to additional conditions.

#### READ MORE

- Opinion: [DE](#) (several languages available, not EN)

### **Commission refers Greece to Court over condition of reciprocity for granting preferential tax rates for bequests**

On 17 February 2016, the European Commission referred Greece to the CJEU (Case C-98/16), requesting the Court to declare that, by the adoption and retention in force of legislation which provides that a preferential inheritance tax rate for bequests of which the beneficiaries are non-profit-making bodies established in other member states of the EU/EEA is subject to a condition of reciprocity, Greece had failed to fulfil its obligations under the EU and EEA provisions on the free movement of capital.

#### READ MORE

- Judgment: [EN](#) (all EU languages available)

### **Commission calls on France to end discriminatory treatment of dividends from non-resident subsidiaries**

The European Commission sent a reasoned opinion to France on 28 April 2016, calling for compliance with a judgment of the CJEU (Case C-310/09 *Accor*) from 2011 which specified that the French law on withholding tax was against EU law, being too restrictive. The Commission maintains that the subsequent restrictive judgment of the *Conseil d'Etat*,

the French Supreme Court, is not in line with EU law as it does not take into account tax paid by sub-subsidiaries in other EU countries, as tax credits were systematically limited to one third of the dividend redistributed in France by non-resident subsidiaries, and formal and disproportionate evidence-based requirements were imposed. The Commission's request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer France to the CJEU.

#### READ MORE

- Press release: [EN](#) (All EU languages available)

### **OECD consultation on tax treaty entitlement of non-CIV funds**

The OECD has published the responses received to its public consultation on treaty benefits for non-CIV (collective investment vehicle) funds, as part of the OECD's follow-up work to Action 6 of the BEPS project.

#### READ MORE

- Press release: [EN](#)
- Responses received: [EN](#)

### **US announce measures against tax inversion deals**

The U.S. Department of Treasury's announcement of 4 April 2016 of its intention to make "tax inversion" deals less financially appealing has led to the calling off of a planned merger between pharmaceutical companies Pfizer (US) and Allergan (Ireland).

By tax inversion deals, corporations relocate their headquarters to countries with a lower tax rate. In the past couple of years, several US companies have changed tax domicile through an acquisition of a foreign company to profit from lower tax rates abroad. Around 23 tax inversion deals took place since 2012, according to the US Congressional Research Service. Irish-based corporations have been very popular, as they allow the firms to benefit from the Irish corporate tax rate of 12.5%, instead of the 35% rate of US corporate tax.

## READ MORE

- The Guardian article, 5 April 2016: [EN](#)
- Irish Times article, 8 April 2016: [EN](#)

### **Double taxation: Advocate-General defends different treatment of foreign interest income where interest deduction has been denied**

Danish rules leading to double taxation by denying the exemption of interest income from a subsidiary in another EU member state are not a restriction to the freedom of establishment, according to the opinion of EU Court of Justice Advocate General Juliane Kokott, presented on 12 May 2016 in the case *Masco Denmark* and *Damixa* (C-593/14). Denmark does not allow a tax exemption on interest income if the corresponding interest deduction is denied due to thin capitalisation rules, and the subsidiary is situated in another member state; the exemption is given where the subsidiary is established in Denmark.

The AG concluded that this difference in treatment did not constitute a restriction on the freedom of establishment. Even if that were the case, the restriction could be justified based on the balanced allocation of taxing rights as well as the coherence of the tax system.

## READ MORE

- Opinion: [FR](#) (available in several languages, not EN)

### **OECD consults on Multilateral Instrument and updates BEPS timetable**

On 31 May 2016, the OECD opened a public consultation (until 30 June) on creating a multilateral instrument to implement the tax treaty-related BEPS measures by modifying bilateral tax treaties (Action 15 of the BEPS Action Plan). An Ad Hoc Group of now 96 countries charged with developing such legal instrument was set up in May 2015. The Group aims to conclude its work and open the multilateral instrument for signature by the end of this year. The OECD invites comments specifically on the implementation of the multilateral agreement and on the matters it will deal with, namely a mutual agreement procedure including an optional provision for

binding arbitration and provisions on hybrid mismatch arrangements, tax treaty benefits in inappropriate circumstances, and the artificial avoidance of “permanent establishment” status.

The OECD also updated its BEPS timetable: The next consultation papers the OECD is planning to issue are:

- Design and operation of the group ratio rule for interest deductions: 6 July 2016 (deadline: 3 August 2016).
- Hybrid mismatches and branches: 15 July 2016 (deadline: 28 July 2016).
- Interest limitation in the banking and insurance sectors: 18 July 2016 (deadline: 29 August).

## READ MORE

- Press release : [EN](#)
- Discussion draft : [EN](#)
- List of members of the ad-hoc group : [EN](#)

### **Reports on cross-border tax problems of individuals**

The European Commission has published two reports containing the findings of an Expert Group assisting the Commission in finding practical ways to remove tax problems of individuals who move across the EU. One report covers tax problems affecting citizens who work or invest in other EU Member States including measures already in place in certain Member States to facilitate tax compliance. The other report focuses on problems related to inheritance taxation. The CFE has contributed to the work of the Expert Group.

## READ MORE

- Report Tax Obstacles: [EN](#)
- Report Inheritance Tax Obstacles: [EN](#)

## INDIRECT TAX

### **Commission publishes VAT Action Plan**

On 7 April 2016, the European Commission tabled its VAT Action Plan aiming to modernise the current EU VAT system.

The Action Plan does not yet contain any legislative proposals but sets out the Commission’s upcoming initiatives aiming to make the VAT system simpler, more fraud-proof and business-friendly.

The Action Plan contains of the following main measures:

- a future single destination-based European VAT system, according to which the supplier of goods will collect the tax from his customer, treating domestic and cross-border supplies equally. This would be supported by a one-stop-shop system extending to all cross-border B2B supplies;
- short-term measures to tackle VAT fraud improving existing cooperation tools such as Eurofisc, to enable member states to carry out joint risk assessments and audits;
- update of the framework for VAT rates and options to grant member states greater flexibility in setting them;
- plans to simplify VAT rules for e-commerce in the context of the Digital Single Market Strategy and for a comprehensive VAT package to make life easier for SMEs.

On VAT rates, the Commission argues that the current framework (a minimum standard rate of 15% and two reduced rates of at least 5% for certain goods and services) is outdated and does not allow newly emerging services such as e-books from benefiting from reduced rates, presenting two options for reform:

- to maintain the minimum standard rate of 15% and revise the list of reduced VAT rates, or
- to grant member states more authority in determining their VAT rates. The required minimum standard rate would be abolished together with the list of reduced rates.

It appears that the former solution has met more support from member states.

The Commission will present a legislative proposal to modernise cross-border e-commerce and provide simplification, using a one-stop shop system also for tangible goods bought online.

The Action Plan also recommends government measures to facilitate voluntary taxpayer compliance and to offer taxpayers digital accounts.

#### READ MORE

- VAT Action Plan, dedicated European Commission website: [EN](#) (DE, FR available)
- Communication “on an action plan on VAT: Towards a single EU VAT area - Time to decide”: [EN/DE/FR](#)
- Press release: [EN](#) (All EU languages)

- Commission announcement: “20 measures to tackle the VAT gap”: [EN](#)
- Questions and answers: [EN](#) (FR available)

### VAT Action Plan – further discussions on plans to introduce reverse charge

At its meeting on 25 May 2016, the Ecofin Council adopted conclusion on the Commission’s VAT Action Plan, mentioning the request by some member states, which reportedly include Austria and the Czech Republic, to apply a general reverse charge mechanism.

This request has been supported by the European Parliament ECON Committee’s draft initiative (non-legislative) report on the Action Plan presented by German Conservative MEP Werner Langen on 27 April.

In contrast, on 20 May 2016, the VAT Expert Group, an advisory body to the European Commission in which CFE is represented, has issued a statement supporting the Commission’s intention to implement the destination principle in B2B cross-border trade, proposed in the Commission’s VAT Action Plan of 7 April 2016, and to make more effective use of existing international cooperation between tax administrations to tackle VAT fraud. The statement also contains a warning against the demand for a generalised reverse charge system, stating that this would risk the development of a coherent, harmonised and fraud proof VAT system and stating that such inconsistencies would create additional opportunities for fraudsters.

The European Commission is not known to be in favour of a general reverse charge mechanism either.

#### READ MORE

- VAT Expert Group opinion: [EN](#)
- Council conclusion on the VAT Action Plan: [EN](#)
- Draft report by MEP Werner Langen: [All EU languages](#)

### CJEU rules on VAT exemption on the processing of payments by credit or debit card

On 26 May 2016, the CJEU delivered two judgments in UK preliminary ruling cases *National Exhibition Centre* (C-130/15) and *Bookit* (C-607/14). The Court decided that where an individual buys a ticket for a show or other event via a provider who processes the payment by debit or credit card in the name and on behalf of another entity, the VAT

exemption of transactions concerning payments and transfers does not apply to the service of that provider.

#### READ MORE

- Judgment in *National Exhibition Center*: [EN](#) (FR available)
- Judgment in *Bookit*: [EN](#) (All EU languages available)

### European Court of Auditors presents report on intra-community VAT fraud

In a report released on 3 March 2016, the European Court of Auditors (ECA) called for tougher measures against intra-Community VAT fraud. The European Court of Auditors has no judicial power but audits the accounts of EU institutions. The report reveals significant weaknesses of the current system and calls on the European Commission to put in place a common system to estimate the scale of intra-Community VAT fraud. The report's analysis has been carried out at both the Commission and Member State level. Five EU Member States were reviewed: Germany, Italy, Hungary, Latvia and the UK. According to the ECA, the European Commission should propose amendments to the VAT directive to further harmonise the state requirements on VAT reporting for intra-Community supplies of goods and services and encourage EU Member States to step up their coordination of reverse-charge policies.

#### READ MORE

- Report: [EN](#); [FR](#); [DE](#); [ES](#); [PT](#); [IT](#)

### UK successful at highest EU level in VAT zero rate for sanitary products

The European Council, composed of heads of EU states and governments, made on 17 March 2016 a specific reference to sanitary products, on which the UK had been pressing the European Commission to allow member states the option of applying a zero rate.

#### READ MORE

- Council Conclusions (see item 15 for VAT): [EN](#)

### Outsourced insurance claims handling is not VAT-exempt

On 17 March 2016, the CJEU decided in the Polish preliminary ruling case *Aspiro* (C-40/15) that the handling and assessment of insurance claims by an outsourced provider who is not an insurance agent or broker does not benefit from the VAT exemption of insurance or related services, following the opinion of Advocate-General Juliane Kokott.

#### READ MORE

- Judgment: [EN](#) (all EU languages)
- Opinion: [EN](#) (all EU languages)

### CJEU: VAT liability does not have to enjoy precedence in liquidation

On 7 April 2016, the CJEU delivered its judgment in case C-546/14, *Degano Trasporti*, on whether a liquidation procedure which would result in only partial recovery of VAT, violates a member state's duty to effectively recover the tax.

The judgement concludes that EU law does not require member states to grant VAT debts preferential treatment over all other categories of debt. An insolvent trader may apply to a court to open a procedure for an arrangement with creditors for the purpose of settling its debts by liquidating its assets, in which that trader offers only partial payment of a value added tax debt and establishes by an independent expert that the trader's bankruptcy would not result in a greater part of the VAT debt would to be repaid. The CJEU followed the opinion by Advocate-General Sharpston of 14 January 2016.

#### READ MORE

- Judgment : [EN](#) (all EU languages)
- Opinion: [EN](#) (all EU languages)

### European Commission takes Germany to court over infringement of VAT rules for travel agencies

On 28 April 2016, the European Commission released its April infringements' package including an announcement to bring Germany before the Court CJEU on the reason of not correctly applying the specific VAT regime for travel agencies. A previous

call was sent already in 2015, but Germany did not react accordingly. The Directive requires that travel agencies must use their profit margin as the VAT tax base, irrespective of the client, in order to create fair competition conditions. This rule aims to create a level playing field for providers and to eliminate distortions of competition. So far, Germany applied this system exclusively to travel services supplied to private users. German authorities also allow travel agencies to set a single profit margin for all package travel supplied during a tax declaration period.

#### READ MORE

- Press release, 28.4.2016: [EN](#) (FR available)

### Advocate General: exemption for intra-Community supply of goods may not be refused for failure to provide VAT ID

On 6 April 2016, CJEU Advocate General Saugmandsgaard Øe provided his opinion in the case *Plöckl* (C-24/15): German tax authorities had claimed that the requirements for exempting an intra-Community supply of goods were not met when a car was sold to a Spanish business and imposed an additional assessment, as no Spanish VAT ID number was provided.

The Advocate General argued that the referring court had determined that no serious indication of fraud existed, all requirements for an exemption had been met, except for the provision of a VAT registration number, which is merely a formal requirement. Non-compliance with such requirement may lead to an administrative fine, but cannot be invoked to refuse the granting of an exemption.

#### READ MORE

- Opinion [DE](#) (available in several languages)

### CJEU judgement in VAT case *Het Oudeland Beheer*

On 27 April 2016, the CJEU delivered its judgment in the Dutch preliminary ruling case C-128/14, *Het Oudeland Beheer* on the VAT taxable amount concerning immovable property:

The Court stated that where land and a building under construction have been acquired with a right in

rem allowing its holder to use the immovable property, the value of that right in rem to be taken in account in calculating the taxable amount of a supply, corresponds to the value of the amount to be paid in consideration each year for the remainder of the long lease granting the right in rem.

The value of this right and the cost of completing the building built on that land may be included in the taxable amount of a supply where the taxable person has already paid VAT on that value and that cost, but also deducted the VAT immediately and in full.

#### READ MORE

- Judgment: [EN](#) (all EU languages)

### Commission calls on Germany to amend VAT rules on cross-border road passenger transport

On 28 April 2016, the European Commission sent a request to Germany to amend its VAT rules on cross-border road passenger transport. Germany currently applies VAT rules that treat short cross-border passenger transport services (less than 10km) as a foreign service for tax purposes, meaning that these services are not taxable in Germany.

EU law however requires that passenger transport services must be taxed where the transport takes place and must be proportionate to the distances covered. According to the European Commission, the rule applied in Germany is not allowed under the VAT Directive and cannot be considered as a simplification measure since it is not intended to simplify the collection of the VAT, but rather not to collect VAT at all.

The Commission's request takes the form of a reasoned opinion. The Commission may refer this issue to the EU Court of Justice within two months.

#### READ MORE

- Press release: [EN](#) (All EU languages)



## CJEU judges on VAT on services by municipalities

The CJEU judged on 12 May 2016 in the Case C-520/14, *Gemeente Borsele*, that a regional or local authority which provides a service for the transport of schoolchildren did not carry out an economic activity and was not therefore a taxable person.

### READ MORE

- Judgment [EN \(available in all languages\)](#)

## Commission updates basic information for micro-e-businesses

The European Commission has updated its guidance for micro-businesses supplying electronic, telecommunications and broadcasting services. Since 2015, these services are to be taxed where the recipient -a consumer or a business- resides. The updates responds to calls from micro-enterprises that find the new rules difficult to comply with.

### READ MORE

- Updated guidance: [EN](#)

## TAX TRANSPARENCY

### European Commission tables proposal for public country-by-country reporting

On 12 April 2016, the European Commission has tabled a legislative proposal for public country-by-country reporting of tax information by large multinationals.

Main features of the proposal are:

All multinationals (EU and non-EU companies) with a global annual turnover exceeding € 750 million that have branches or subsidiaries in the EU would be required to publicly disclose information on:

- the nature of the group's activities,
- the number of employees,
- the total net turnover made, which includes the turnover made with third parties as well as between companies within a group,
- the profit made before tax,

- the amount of income tax due in the country as a reason of the profits made in the current year in that country,
  - the amount of tax actually paid during that year,
  - and the accumulated earnings,
- on an annual basis. Reporting should also include explanations on discrepancies between the amounts of income tax paid and income tax accrued.

The information has to be provided for each EU member state in which the multinational operates. For non-EU countries, aggregated information may be provided. The proposal provides for stronger transparency requirements for companies' activities in countries which do not observe international standards for good governance in the area of taxation. Reportedly, this is a last-minute addition in reaction to the controversy around "Panama Papers". These third countries will be determined using a common EU screening process that has been announced as part of the Anti-Tax Avoidance Package of 28 January but still needs to be developed.

The information will have to be available for at least 5 years on the company's website and in an EU business register.

Country by country reporting to tax administrations by multinationals (also applying the € 750 million turnover thresholds, in accordance with the OECD BEPS 13 Recommendations) has been adopted by the EU Council on 25 May 2016 (see article in this report).

### READ MORE

- The Guardian article: [EN](#)
- Link to press release [EN \(All EU languages available\)](#)
- Questions and answers: [EN \(FR available\)](#)
- Text of the proposal COM(2016)198: [EN](#) (all EU languages)
- Executive Summary [DE;EN](#)
- Impact assessment [EN](#)

### Israel extends mandatory tax planning disclosure requirements

Since the beginning of this year, new tax planning disclosure rules apply to tax advisers in Israel: While certain transactions considered as "tax planning" were already subject to disclosure since 2006, the existence of a written professional opinion regarding transactions, potentially resulting in a tax saving, must now be reported as well, including the transaction or activity to which the opinion relates and its

estimated tax impact. A reporting obligation is triggered by an opinion for which fees exceed an equivalent of roughly € 24,000 or for which fees are contingent on the "tax benefit". Opinions containing a legal position contrary to views published by the tax administration must be disclosed when the tax benefit exceeds roughly € 1.2 m in one year, or € 2.4 m over four years.

In the EU, Ireland, Portugal and the UK have introduced tax planning disclosure requirements. The OECD, in its Final Recommendations on BEPS Action 12, gives recommendations on disclosure requirements but refrains from commenting on whether countries should or should not introduce them.

### **OECD issues standardised electronic format for the exchange of BEPS country-by-country reports**

On 22 March 2016, the OECD released a standardised electronic format for the exchange of country-by-country (CbC) reports between jurisdictions as well as a user guide. This CbC XML scheme is part of the OECD's work to ensure the swift and efficient implementation of the BEPS measures.

CbC reports should be electronically transmitted between the competent authorities. The move is expected to help tax administrations obtain a complete understanding of the way in which multinational enterprises structure their operations. Exchanges of CbC reports will start in 2018 containing information from the year 2016 onwards. The CbC reporting template applies to groups with an annual consolidated revenue in the immediately preceding fiscal year of at least € 750 million.

#### **READ MORE**

- Press release: [EN](#)

### **Council adopts reporting and exchange of country-by-country tax information**

On 25 May 2016, the Ecofin Council formally adopted the proposal including in the EU Administrative Cooperation Directive the filing of country by country reports by large multinationals (revenues exceeding € 750 million) to tax authorities and the automatic exchange of the reports among these. EU-based companies will already have to report from the 2016 fiscal year. Parent companies from

non-EU countries have to file reports through their EU subsidiaries from the 2017 fiscal year.

This measure which implements the OECD/G20 BEPS Action 13 Recommendation into EU law had already been politically agreed at the Council meeting on 8 March; the European Parliament has expressed its support on 12 May.

#### **READ MORE**

- EP opinion, 12 May 2016
- Text adopted by the Council, 25 May 2016: [EN](#)

## **ADMINISTRATIVE CO-OPERATION AND FIGHT AGAINST TAX FRAUD**

### **OECD Global Forum publishes 10 new peer reviews**

On 14 March 2016, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes published ten new country peer reviews assessing the legal framework and practical functioning of tax information exchange.

Croatia and Tunisia were found to have sufficient legal frameworks in place to move to phase 2 dealing with the practical functioning of the exchange. For Georgia and seven non-European countries including Kenya, Nigeria and Saudi-Arabia, the phase 2 reviews were completed, bringing the number of jurisdictions that have passed both phases to 94, with 28 jurisdictions only having completed phase 1. On 14 March, 132 countries were members of the Global Forum. Peer reviews are carried out irrespectively of whether a country is a Global Forum member.

#### **READ MORE**

- All ratings issued to date: [EN](#)
- Press release, 14 March 2016: [EN](#) (FR available)

### **San Marino tax agreement approved by EU Council**

On 21 April 2016, the EU Council approved the conclusion of an agreement with San Marino to fight tax evasion, requiring the EU member states and San Marino to exchange bank account information automatically, applying measures equivalent to

those in an EU Administrative Cooperation Directive.

#### READ MORE

- Press release [all languages](#)

### **FATCA: Panama signs agreement / Competent Authority Agreement with Slovakia published**

On 27 April 2016, Panama and the United States signed an intergovernmental agreement to improve international tax compliance according to the US Foreign Account Tax Compliance Act (FATCA).

FATCA represents an US initiative, calling on financial institutions around the world to provide information on the accounts of Americans abroad in order to fight tax evasion.

With the signing of this Intergovernmental Agreement (IGA), exchange of information about customers to which FATCA applies will take place between the tax administrations, but not directly between the Foreign Financial Institutions and the Internal Revenue Service of the United States.

On 26 April 2016, the US Internal Revenue Service also released the text of the competent authority arrangement signed between the US and Slovakia, following up on the signing of the US-Slovak FATCA implementation agreement of 31 July 2015.

#### READ MORE

- FATCA intergovernmental agreement US/Panama 27 April 2016: [EN](#)
- FATCA implementation agreement US/Slovakia, 26 April 2016: [EN](#)

### **Further countries agree to sharing of country-by-country reports and bank account information**

On 12 May 2016, Canada, China, Iceland, India, Israel and New Zealand signed the Multilateral Competent Authority Agreement for the automatic exchange of country-by-country reports, bringing the total number of signatories to 39 countries. The agreement aims to implement Action 13 of the BEPS

Action Plan to ensure that tax administrations obtain a broader picture on how multinational enterprises structure their operations.

Moreover, on 13 May, five more jurisdictions including Panama committed to joining the automatic exchange of financial account information (OECD/G20 Common Reporting Standard, or CRS), bringing the number of CRS signatories to 101; Israel and Russia also signed the Multilateral Competent Authority Agreement for the implementation of the CRS, being the 81st and 82nd signatory to that agreement.

#### READ MORE

- press release, CBCR: [EN](#)
- press release, CRS: [EN](#) (ES, FR available)
- Multilateral Competent Authority Agreement on CRS: [EN](#)
- Multilateral Competent Authority Agreement on CBCR: [EN](#)

## STATE AID

### **Ireland and UK divided over Commission's decision on tax rulings**

Ireland and the UK took opposite sides regarding European Competition Commissioner Margrethe Vestager's efforts to target certain tax rulings issued by EU member states to multinationals. According to an article published in POLITICO, Ireland supported an appeal against the Commission's verdict calling on Luxembourg to collect €25 - 30 million in taxes from a subsidiary of Fiat. The UK backed Vestager against the Luxembourg's appeal, to the surprise of commentators. The country apparently also supported the Commission in an appeal by the Dutch government to collect up to €30 million in back taxes from Starbucks. The Commission recently dropped an early stage inquiry into generous UK tax arrangements for patent-holders, but is still assessing a UK tax settlement with Google.

#### READ MORE

- Politico article, 18 May 2016: [EN](#)

### OECD publishes new reports on co-operative compliance and tax service providers

On 13 May 2016, the OECD published a number of new reports two of which are of specific relevance for tax advisers:

The report “Co-operative Tax Compliance: Building Better Tax Control Frameworks” is a follow-up to the OECD’s 2013 report introducing the concept of “co-operative compliance” and deals with the design and operation of internal Tax Control Frameworks which is a key component in large businesses’ compliance, and with risk management of tax administrations.

The report “Rethinking Tax Services: The Changing Role of Tax Service Providers in SME Tax Compliance” contains a special focus on tax-related services provided by other operators than tax advisers or accountants, like software companies. It provides an overview of developments and new service solutions in the area of online and mobile services and machine-to-machine communication, and new ways of interaction between SMEs and tax administration, which may significantly impact on the market for accountancy and tax advice.

#### READ MORE

- New OECD publications: [EN](#)

### Call for reinforcing the Code of Conduct on business taxation

On 8 March 2016, the Ecofin Council adopted conclusions on the future of the working group overseeing the implementation of the Code of Conduct on business taxation. The Group is called on to speed up its decision-making process and become more transparent.

The Council conclusions aim at an improvement of the group’s governance, transparency and working methods. Assessments of potentially harmful tax regimes should be delivered quicker, with an earlier and more frequent involvement of the Council. Information to the public on the group’s ongoing and past work should be enhanced. A decision on the revision of the group’s mandate should be taken by the end of June 2016. These plans to beef up the Code of Conduct Group follow-up on the Lux Leaks controversy and the Commission’s state aid probes into the tax affairs of multinationals. The plans have been criticised as unambitious and disappointing by

German Green MEP Sven Giegold, who stressed that they lack an obligation of the group’s chair to appear before the European Parliament. The Code of Conduct Group on business taxation dealing with harmful tax competition was set up by EU ministers in 1998.

#### READ MORE

- Council conclusions, 8 March 2016: [EN](#)

### MEPs call for whistle-blowers protection

On 4 May 2016, the Greens/European Free Alliance in the European Parliament have called on the European Commission to table a legislative proposal to protect whistle-blowers and have presented a proposal for a draft Directive for discussion. This proposal would apply to all workers in the public and private sectors and assure them protection from criminal and civil prosecution, excluding in particular sanctions from the employer. Protection should not only be granted for disclosure of criminal action, but also e.g. of facts that show, e.g., a likely negative effect on public finance. Unlike the EP’s resolution of 16 December 2015, the newly proposed text does not provide for a limitation that whistle-blowers should firstly report to public authorities and only go public where these authorities fail to take action.

- Discussion draft: [EN](#)

### UN publishes data on financial flows through tax havens

On 3 May 2016, the UN Conference on Trade and Development (UNCTAD) published a report illustrating that investment flows through offshore financial hubs, including offshore financial centres and special purpose entities (SPEs), have declined but remain sizable, and were very volatile in 2015. As the report points out, the proportion of investment income booked in low tax, often offshore, jurisdictions is high and possibly growing. It further states that the disconnect between the locations of income generation and productive investment results in substantial fiscal losses and highlights a pressing need to create greater coherence among tax and investment policies at the global level.

## READ MORE

- UN Report: [EN](#)

### European Commission publishes country-specific recommendations on tax policy

On 18 May 2016, the European Commission tabled country-specific recommendations in the framework of the European Semester on economic policy coordination for the next 12 to 18 months including tailored policy guidance to EU member states.

A thematic fiche on taxation features tax and revenue statistics as well as general trends and policy challenges. Recommendations explore options to improve current tax systems in order to become more-job and investment friendly while also ensuring fair contributions. Recent tax reforms in the EU member states are also highlighted and examples cited on good practices.

In its Communication on the country-specific recommendations, the Commission highlights further growth potential by improving the performance of business services. The Commission finds that the number of restrictions in services sectors remains high in several EU member states and believes that this negatively impacts investment, growth and employment. The range, level and number of restrictions prevailing in business services and regulated professions, especially in engineering, accounting, architecture and legal services, requires attention in particular towards Belgium, Germany, Luxembourg and Austria.

## READ MORE

- European Semester Thematic Fiche Taxation, tax and revenue statistics: [EN](#)
- European Semester, 2016 Recommendations thematic website: [EN](#)

## ANTI-MONEY LAUNDERING

### Panama Papers: ICIJ releases searchable database

The International Consortium of Investigative Journalists announced the release of a searchable database on 9 May 2016 with information on more than 200,000 offshore entities that are part of the Panama Papers release. This database including information about companies, trusts, foundations and

funds is expected to be the largest-ever data release on secret offshore companies.

## READ MORE

- Database: [EN](#)

### EU ministers agree pilot project for exchange beneficial ownership information / planned disincentives for tax advisers

Minister at the informal Ecofin Council on 22 April 2016 agreed to enter into a pilot project for the automatic exchange of information on ultimate beneficial owners as a follow-up to last week's letter by the so-called G5 (The UK, Germany, Spain, France and Italy) expressing that group's intention to embark on such pilot project.

The experience from this project should feed into an OECD- and FATF- (Financial Action Task Force) led development of a global standard and interlinked registries containing full beneficial ownership information. European Commissioner Dombrovskis highlighted that the Commission will also follow-up on the mandate to explore ways to introduce disincentives for those who give advice in tax evasion planning and elaborate tax evasion schemes.

Media reported that the meeting had revealed splits among countries such as France and the UK which support the publication of country-by-country tax information by large multinationals, proposed by the Commission on 12 April, and countries like Austria, Germany and Malta which are opposed to the proposal which requires qualified majority in the EU Council.

The European Commission also intends to table a revised proposal for the Anti-Money Laundering Directive.

## READ MORE

- What the papers say: [Reuters](#); [Out-law.com](#)
- ECOFIN: Dutch EU presidency: [EN](#)
- Press release [EN](#)

### Six countries sign up to public register of beneficial owners

On 12 May 2016, the Commonwealth Secretariat hosted a major conference in London dedicated to the fight against corruption titled 'Tackling Corruption Together', gathering high-level government

officials, business and civil society organisations. Forty jurisdictions agreed to exchange beneficial ownership information among governments, including a number of UK crown dependencies known as tax havens. Six countries, the UK, Afghanistan, Kenya, France, the Netherlands and Nigeria went further by committing to publish registers of beneficial owners. Six more, including Australia, were reported to consider this move in future. The UK government also announced the setting-up of an international anti-corruption coordination centre in London.

#### READ MORE

- Dedicated UK government website: [EN](#)
- The Guardian article: [EN](#)

### Countries follow-up on “Panama Papers”

The data leak dubbed “Panama Papers” which revealed ownership information on 214,000 shell companies in the British Virgin Islands, Panama and other jurisdictions, and exposed names of politicians and other prominent persons, keeps producing news throughout the EU and beyond:

The UK Financial Conduct Authority (FCA) has asked 20 banks and financial institutions to reveal, by mid-April, any links to the Panama law firm from which the leaked documents originate and to that firm’s offshore clients. The UK opposition has asked to establish direct rule in the UK’s crown dependencies to stop tax evasion.

The French banking supervisory authority ACPR has asked the French banks for additional reporting on their activities in countries considered tax havens. France has also decided to put Panama back on its list of uncooperative countries, due to the country’s alleged poor compliance with a bilateral agreement on tax cooperation.

France, Spain and Australia have initiated investigations into possible tax fraud and money laundering, as a result of the revelations.

Germany, according to press reports, is planning disclosure obligations for tax-saving schemes and a change to limitation periods for tax evasion; these would only commence once the taxpayer has complied with his reporting obligations.

Panama so far has not committed itself to participate in the international automatic exchange of certain bank account information (OECD Common Reporting Standard). However, only in February 2016, the inter-governmental Financial Action Task Force had removed Panama from its grey list of countries

lagging behind in the fight against money laundering and terrorism financing.

With the implementation of the 4<sup>th</sup> EU Anti Money Laundering Directive which has to be completed in June 2017, EU member states are obliged to set up transparency registers of beneficial owners of their legal entities and, with some limitations, also for trusts. These registers will be accessible for competent authorities, obliged entities such as tax advisers, and (in the case of legal entities) for persons and organisations having a legitimate interest.

#### READ MORE

- Dedicated website of the International Consortium of Investigative Journalists: [EN](#)
- OECD press release, 8 April 2016: [EN/FR](#)
- 4<sup>th</sup> EU Anti Money Laundering Directive: [All EU languages](#)

#### Press:

- Le Monde article, 7 April 2016: [FR](#)
- The Telegraph article, 7 April 2016: [EN](#)
- Die Welt article, 10 April 2016: [EN](#)
- Yahoo/AFP article, 5 April 2016: [EN](#)
- Euractiv article, 5 April 2016: [DE](#)
- Statistical data on “Panama Papers”: [EN](#)
- Politico article, 4 April 2016: [EN](#)

### OECD follow-up on Panama Papers

Senior tax administration officials from all over the world gathered on 13 April 2016 at the Joint International Tax Shelter Information and Collaboration (JITSIC) Network of the OECD in Paris in order to explore opportunities for obtaining data, co-operation and information-sharing in light of the “Panama Papers”. JITSIC is a grouping of tax officials who exchange views, information and practices at an operational level.

According to press reports, the UK has asked the OECD to take the lead in drafting a global tax havens black list.

#### READ MORE

- OECD press release [EN](#)
- Report on “City a.m.” website: [EN](#)



### Commission and CJEU launch new web applications to facilitate case law search

In May 2016, the European Commission launched a new functionality on the European e-Justice Portal, the European Case Law Identifier (ECLI). This search engine allows easier search on case law published by national and international courts and tribunals. Currently, the search engine provides access to approximately 4 million case law decisions from the EU Court of Justice (CJEU), the European Patent Office, and courts in France, Spain, the Netherlands, Slovenia, Germany, the Czech Republic and Finland. The ECLI Search Engine will be further improved in terms of coverage.

Also the CJEU launched a new multilingual application, CVRIA, for smartphones and tablets, iOS and Android. The application is available in all EU languages. It has four sections:

- ‘Case-law’ latest decisions of the Courts of the CJEU (judgments, orders and opinions);
- ‘Press releases’: the 10 most recent press releases published by the institution;
- ‘Judicial calendar’: hearings, readings of Opinions and deliveries of judgments scheduled for the next five weeks;
- ‘Search’: access to all the case-law of the Court.

#### READ MORE

- European e-Justice Portal: [EN \(All EU languages\)](#)
- ECLI search engine: [EN \(All EU languages\)](#)
- CVRIA app via Google store: [EN](#)
- CVRIA app via iTunes: [EN](#)

### Public consultation on common insolvency framework

Since 23 March 2016, the European Commission consults on the establishment of an EU-wide insolvency framework, following the publication of an initial inquiry into insolvency law harmonisation earlier this month. The European Commission aims to support businesses in financial difficulties while at the same time maximising the value received by creditors, shareholders, employees, investors, tax authorities, and other parties concerned. The Commission intends to present a legislative proposal on insolvency by the end of 2016. Overall efficiency and

effectiveness of insolvency frameworks should be increased while also building on national regimes. Closing date is 14 June 2016.

#### READ MORE

- Dedicated Commission website: [EN](#) (DE/FR available; the questionnaire is available in all EU languages)

### Commission proposes equal pay for posted workers – tax still to be paid in home countries

On 8 March 2016, the European Commission tabled its long-expected proposal for a revision of the rules on the posting of workers. The initiative aims at ensuring fair wage conditions and a level playing field between posting and local companies in the host country.

The targeted revision will introduce changes in three areas: remuneration of posted workers, rules on temporary work agencies, and long-term posting. The proposal foresees that posted workers are subject to equal pay and working conditions as local workers. Currently, posted workers are already subject to the same rules as host member state employees in certain fields, such as health and safety. However, the employer is not obliged to pay a posted worker more than the minimum rate of pay set by the host country.

According to the Directive proposal, all the rules on remuneration that are applied generally to local workers would also have to be granted to posted workers. Remuneration would also include other elements such as bonuses or allowances where applicable. Taxes and social contributions of the posted workers will still have to be paid in their home countries, according to those countries’ laws. To that extent, there will remain some level of differences in wages costs for employers.

#### READ MORE

- Press release: [EN \(DE FR available\)](#)
- Directive proposal COM(2016)128: [All EU languages](#)

## **Public consultation on cross-border provision of services**

On 3 May 2016, the Commission, DG Growth (formerly Internal Market) launched a public consultation dealing with administrative and regulatory barriers on cross-border services. The survey concerns “business services”, specifically mentioning accountancy. Legal advice and statutory audit are excluded. Tax advisers are not expressly mentioned, but they also fall under the EU Services Directive to which the survey refers.

The Commission stresses that the survey is aiming at mid-sized professional firms and the factors that prevent them from expanding, looking in particular on simplifying the setting up of branches and agencies in another member state.

Essentially, it is about whether EU member states should still be able to impose certain regulatory requirements on professional firms (notably on shareholder structure, legal form, multidisciplinary activities, professional indemnity insurance requirements and services standards), whether they should exempt firms from other member states from such requirements, or whether there should be some form of harmonisation of what can be required. It is remarkable that the questionnaire also addresses domestic situations, not having a cross-border element.

The deadline is 26 July 2016.

### **READ MORE:**

- Link to the public consultation: [EN](#) (all languages available)

## **Reforms of professional regulation: Commission consults on National Action Plans**

On 27 May 2016, the European Commission has opened a public consultation on the “National Action Plans” drawn up by EU member states to explain whether or not they intend to reform the regulation of their professions. The Commission has observed that its recommendations in this matter, expressed in the country-specific recommendations as part of the European Semester, are often ignored. Indeed qualification requirements are a competence of member states, to the extent they are in conformity with EU law, in particular the proportionality requirement.

The public consultation will give stakeholders the possibility to comment on a maximum of four National Action Plans and express criticism towards the member states’ assessments. The outcome of the survey will feed into the development a common methodology for member states to assess the proportionality of their requirements. The consultation will be open until 19 August 2016.

### **READ MORE**

- Consultation paper: [EN](#)

## **EP working on report requesting new rules and sanctions for tax advisers**

The European Parliament’s “TAXE 2” Special Committee on tax rulings and other measures similar in nature or effect, continuing the work of its predecessor which was set up in the wake of the “Lux Leaks” revelations, is working on its (non-legislative) initiative report scheduled to be adopted on 4 July 2016. On 11 May, Dutch Social Democrat MEP Jeppe Kofod and German Liberal MEP Michael Theurer presented their draft report. For tax professionals, the draft report demands EU-wide conflict of interest rules preventing tax advisers from advising both government and private clients, and sanctions for advisers engaged with tax havens, tax evasion or aggressive tax planning.

### **READ MORE**

- Draft report: [EN](#)
- Amendment proposals will be linked at the bottom of this website: [EN](#)





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