Euro Tax Flash

Issue 265 – December 4, 2015

Euro Tax Flash from KPMG's EU Tax Centre

Final ECON Committee report published, TAXE Committee mandate extended

On December 2, 2015 the European Parliament's permanent Economic and Monetary Affairs (ECON) Committee published the final version of its report entitled "Bringing transparency, coordination and convergence to Corporate Tax policies in the Union". The final version, adopted by the Committee on December 1 deviates to some extent from the earlier draft (see ETF 263).

On the same day, December 2, the European Parliament (EP) also decided that the work of its Special Committee on Tax Rulings (TAXE Committee) should be continued under a new mandate for six months.

Background

Following the recent public and political interest in advance tax ruling practices in Member States (MS), and especially the LuxLeaks scandal last year, the EP decided in December 2014 to launch the drafting of a legislative own-initiative report on Bringing transparency, coordination and convergence to Corporate Tax policies in the Union. The drafting of this report was assigned to the EP's permanent ECON Committee.

Further to the assignment to its permanent ECON Committee, the EP decided in February 2015 to set up a Special Committee on Tax Rulings (TAXE Committee).

Although both committees were set up by the EP, there are differences in the powers each committee has. The key difference is that the ECON Committee has the power, through the EP's legislative own-initiative procedure, to make the European Commission (EC) respond to its recommendations, whereas no such obligation follows from the TAXE Committee's non-binding recommendations. If the recommendations are adopted by the EP as a whole, the EC is obliged to respond to the ECON Committee's recommendations within three months by issuing a legislative proposal or giving an explanation for not doing so.

Recommendations made in the final ECON Committee report

The ECON Committee report contains a number of recommendations to the EC on topics such as Country-by-Country Reporting, protection of whistleblowers and CCCTB. The recommendations are based on the work of the TAXE Committee and thus overlap to some extent with the matters covered in the latter's report published on November 25, 2015 (see attached EU Tax Centre Announcement).

The final text is somewhat more extensive than the original report (see ETF 263). The main changes to the original report are:

1. Transparency

- MS should inform other MS and the EC on introducing new measures that could have a material impact on the effective tax rate in that MS or the tax base of another MS. Penalties should be imposed on MS which fail to comply with this requirement.
- Information provided in Automatic Exchange of Information on tax rulings (see ETF 258) should be given in an agreed, standardized form, and sanctions should be imposed on non-compliant MS.
- Tax advisory firms should be obliged to disclose to national tax authorities when they develop and begin promoting certain tax schemes intended to help companies reduce their overall tax liability, and the information provided to tax authorities could potentially be shared between MS.

2. Coordination

- A Common Consolidated Corporate Tax Base (CCCTB) should be introduced and based on a formula apportionment method reflecting the real economic activities of companies, and any CCCTB proposal should include an anti-avoidance clause.
- The Code of Conduct Group should be headed by a political Chair appointed by the Ministers for Finance, and each MS should appoint a high-level representative and a deputy to it.
- The EC should propose common European standards and

definitions for qualifying Research and Development (R&D) activities in the application of innovation and patent boxes.

- The grandfathering period applied to current innovation and patent boxes should be shortened to June 30, 2017.

3. Convergence

- Amounts recovered due to illegal tax-related state aid should be paid to the EU budget or to MS which have suffered from an erosion of their tax base (instead of the MS which granted the illegal aid), and all state aid-related legislative action recommended by the Committee should be taken by mid-2017.
- A withholding tax (or an equivalent measure) to avoid profits leaving the EU untaxed should be introduced.

4. Other measures

- MS should be given more freedom to consider companies' tax compliance, and especially cases of systematic non-compliance, when issuing procurement contracts.
- MS should inform the EC in advance of any new tax amnesty schemes.

TAXE II Committee

On the basis of its preparatory work, the initial TAXE Committee published a report, including recommendations, on how to improve transparency and cooperation between MS in the field of corporate taxation. The report was adopted, in the form of a resolution, by the EP on November 25, 2015 (see attached EU Tax Centre Announcement).

After the end of its initial mandate, it was decided that the work of the TAXE Committee should be continued under a new mandate for six months. The decision was endorsed by the EP on December 2, 2015 by 561 votes to 69 with 5 abstentions. The structure of the TAXE II Committee will be the same as that of its predecessor, and it will build on the work done previously, in particular on the said parliamentary resolution. Additionally, the new committee will also follow up on ongoing work by international institutions, including the OECD and G20.

Next steps

The ECON Committee's report will be put to a vote by the EP on December 16, 2015. If it is approved, the Commission has to respond to the recommendations within three months (as explained above).

The TAXE II Committee will continue the TAXE Committee's work, focusing on harmful corporate tax regimes and practices at the European and international level on a continuous basis until the end of its mandate.

EU Tax Centre Comment

The assignments of two different parliamentary committees in the field of corporate taxation, the extension of the TAXE Committee's mandate (as TAXE II Committee), as well as the detailed additions made to the original ECON Committee's report reflect the increasing pressure the EP is putting on other European institutions with regard to countering aggressive tax planning and promoting tax transparency. The legislative own-initiative procedure remains the most effective tool for the EP in this regard, as it now has the possibility to force the EC to react to its recommendations by adopting the final ECON Committee report in its upcoming plenary session.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor.

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