

CFE's Tax Top 5

KEY TAX NEWS OF THE WEEK

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Commission Proposes to Postpone DAC6 Reporting & VAT E-Commerce Implementation

The European Commission has published [proposals](#) for Council decisions to postpone deadlines imposed by the EU Directive on Administrative Cooperation by 3 months, as well as the entry into force of the VAT E-commerce package by 6 months.

This follows on from public requests made by [financial](#) and [professional association organisations](#), seeking leniency in the enforcement of penalties and deadlines contained within the Directive due to the extraordinary consequences of the COVID-19 outbreak which have resulted in severe disruption across the European economy.

As concerns the Directive on Administrative Cooperation, the [proposal](#) would:

- *Defer the time limit for exchanges of information on Reportable Financial Accounts by 3 months, i.e. until 31 December 2020;*
- *Change the date for the first exchange of information on reportable cross-border arrangements that feature in Annex IV to Council Directive 2011/16/EU from 31 October 2020 to 31 January 2021;*
- *Change the date for the beginning of the period of 30 days for reporting cross-border arrangements which are included in Hallmarks listed in Annex IV to Council Directive 2018/822/EU from 1 July 2020 to 1 October 2020;*
- *Change the date for the reporting of the 'historical' cross-border arrangements (i.e. arrangements that became reportable from 25 June 2018 to 30 June 2020) from 31 August 2020 to 30 November 2020.*

The Commission has also included in the proposal concerning the Directive on Administrative Cooperation the possibility of extending the reporting deadlines for a further 3 months, depending on the continued evolution of the coronavirus impact on the EU.

As concerns the VAT e-commerce package, the [proposals](#) would “*only concern the date of application of the already adopted legal framework of the VAT e-commerce package set out in the VAT Directive. The date of application shall be postponed by six months. This means that the rules shall be applied as of 1 July 2021 instead of 1 January 2021. Consequently, Member States shall adopt and publish their transposition measures by 30 June 2021 instead of 31 December 2020.*”

The proposals will be considered by the Council as a matter of priority.



EU Commission Publishes Anti-Money Laundering Action Plan

The Commission has adopted an [Action Plan](#) for a comprehensive Union policy on preventing money laundering and terrorist financing. The plan is comprised of 6 pillars, which the Commission aims to deliver on by 2021. The pillars are:

1. Effective implementation of existing rules;
2. A single EU rulebook;
3. EU-level supervision;
4. A support and cooperation mechanism for financial intelligence units;
5. Better use of information to enforce criminal law;
6. A stronger EU in the world.

The Action Plan builds on deficiencies identified in the package adopted by the Commission in July 2019 concerning the implementation of the EU anti-money laundering framework, which stressed the need for increased harmonisation at EU level and EU mechanisms to strengthen the framework.

Alongside the Action Plan, the Commission also published a [Revised Methodology](#) for identifying high risk third-countries with deficiencies in their money-laundering and counter terrorist financing regimes. It aims to improve transparency in the process by “(i) the interaction between the EU and FATF listing process; (ii) an enhanced engagement with third countries; and (iii) reinforced consultation of Member States experts.”

In addition, the Commission has published an updated [List of High-Risk Third Countries](#), by way of Delegated Regulation, in line with its revised methodology. The list has been submitted to the European Parliament and Council for approval, which ordinarily should occur within one month.

A consultation concerning the Action Plan has been launched on the [Have Your Say webpage](#), which will run until 29 July 2020.



Delivery of EU Tax Package Delayed Until July 2020

EU Commission proposals previously anticipated to be published on 10 June of this year are now set to be released on 15 July. An [indicative planning document](#) details that the Commission’s Anti-Fraud Package and Customs Union Package are expected to be published in mid-July, though the agenda notes that this is yet to be confirmed.

The Anti-Fraud Package will be comprised of:

- Communication on an ‘Action Plan to fight tax evasion and to make taxation simple and easy’;
- Communication on ‘Tax good governance in the EU and beyond’, encompassing the external action strategy towards third countries, and possible, some intra-EU aspects;

- Revision of the Directive on automatic exchange of information – DAC7, which concerns reporting on income derived from online platforms (both direct and indirect tax aspects), which coincides with work undertaken by OECD’s Working Party 9 and 10 on voluntary model rules for reporting of online platform activities.

The Customs Union Package will be comprised of an Action Plan on the Customs Union and a legislative proposal on the Customs Single Window.



Decision of the CJEU in Case C-547/18 on Place of Supply & PE Under EU VAT Law

The Court of Justice of the European Union has recently delivered its decision in [Case C-547/18 *Dong Yang Electronics Sp. z o.o. v Dyrektor Izby Administracji Skarbowej we Wroclawiu*](#), a reference for a preliminary ruling from the Polish Regional Administrative Court, in which the Court of Justice was asked to give its ruling concerning the place of supply of services under VAT law.

The case concerned a Korean company, Dong Yang Electronics, who, with the involvement of its Polish subsidiary, engaged a Polish entity to make supplies of assembly services. The Court was asked to determine whether the involvement of its Polish subsidiary created a fixed establishment of the Korean contractor, such that the place of supply was Poland, creating an obligation for European VAT to be paid.

The ECJ in its decision held that *“a permanent establishment of a company established in a third State cannot be inferred by a service provider solely from the fact that that company has a subsidiary there”* and that *“Article 44 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as amended by Council Directive 2008/8/EC of 12 February 2008, and Article 11, paragraph 1, and Article 22, paragraph 1, of the implementing Regulation (EU) No 282/2011 of the Council of 15 March 2011 laying down implementing measures for Directive 2006/112, must be interpreted as meaning that the existence, within the territory of a Member State, of a permanent establishment of a company established in a third State cannot be inferred by a service provider solely because this company has a subsidiary there and that this service provider is not required to inquire, for the purposes of such an assessment, of the contractual relations between the two entities.”*

The Court did not follow the Advocate General Opinion of AG Kokott in this case, in which AG Kokott held that in principle a subsidiary of a company established outside the EU should not be regarded as a fixed establishment for VAT purposes, except in circumstances where the contractual structure concerning the arrangements could be shown to contain elements of abuse.



EU Confirms Enlargement of the Union with Western Balkans at the Zagreb Summit

At the [EU-Western Zagreb Balkans Summit](#), a highlight of the Croatian EU Presidency unfortunately forced to be held virtually in light of the Coronavirus outbreak, the EU affirmed its commitment to a European vision for the Western Balkans.

President Ursula von der Leyen, speaking at the press conference following the Summit stated *“This Summit, even if it is virtual, is a testimony of the importance the European Union gives to the region. And it is a testimony that the Western Balkans are an absolute priority for the European Union and for my Commission. The Western Balkans belong in the EU. There is no question for us about this. And this is why I firmly believe that the European Union has a special responsibility in assisting its partners in the region.”*

During the Summit, the [Zagreb Declaration](#) was concluded, under which the EU Member states have promised a 3 Billion Euros package to the Western Balkans to support the post-coronavirus crisis recovery of the region, conditioned with a commitment by the Western Balkans governments to uphold European values and principles and carry out necessary legal and socio-economic reforms to meet those values.



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