

CFE's Tax Top 5

KEY TAX NEWS OF THE WEEK

BRUSSELS | 22 JUNE 2020



US Withdraws from International Digital Tax Negotiations

On 17 June US Trade Representative Robert E. Lighthizer confirmed that the US was withdrawing from OECD Inclusive Framework discussions on taxation of the digital economy. The decision was communicated to European Finance Ministers in a [letter](#) last week, igniting fears of a [trade war](#) between the EU and US.

The OECD published a public statement in response to the developments, with OECD's Secretary-General, Angel Gurría, stating "All members of the Inclusive Framework should remain engaged in the negotiation towards the goal of reaching a global solution by year end...Absent a multilateral solution, more countries will take unilateral measures and those that have them already may no longer continue to hold them back. This, in turn, would trigger tax disputes and, inevitably, heightened trade tensions. A trade war, especially at this point in time, where the world economy is going through a historical downturn, would hurt the economy, jobs and confidence even further. A multilateral solution based on the work of the 137 members of the Inclusive Framework at the OECD is clearly the best way forward."

EU Commissioner for the Economy, Paolo Gentiloni, responded to the decision [stating](#) "We need a digital tax adapted to the reality of the new century. An agreement is needed in the global negotiations. If the American withdrawal makes it impossible, the EU Commission will put a new European proposal on the table". A failure to agree an agreement at international level, will very likely lead to a raft of further unilateral digital taxes being introduced, and retaliatory tariffs, escalating to trade wars.

A virtual meeting of the Inclusive Framework is scheduled to take place in July to discuss progress made by the working groups. It was expected that details of the key policy features would be agreed and made public in October and a report produced for the G20 by the end of the year on the final solution agreed on by the Inclusive Framework.



EU Parliament Establishes Permanent Tax Subcommittee

At the Plenary Session on 18 June, the European Parliament [voted](#) to establish a permanent tax subcommittee to the Committee on Economic and Monetary Affairs. The subcommittee will be comprised of 30 members, and will be responsible for investigating issues

surrounding “*tax-related matters, and particularly the fight against tax fraud, tax evasion and tax avoidance, as well as financial transparency for taxation purposes*”.

The move to create a permanent tax subcommittee had been anticipated following on from several temporary inquiries into specific tax scandals being established in the past. The most recent committee, the TAX3 Committee, tasked with investigating financial crimes, tax evasion and tax avoidance, noted in its report adopted by the European Parliament in March 2019 that there was a lack of political will in EU Member states to address tax evasion, tax avoidance and financial crime. The TAX3 Committee recommended the Commission and Council adopt a comprehensive definition of aggressive tax planning, commence work immediately on establishing European financial police force, an EU financial intelligence unit, and an EU anti-money laundering supranational watchdog.

The EU Council also adopted [conclusions](#) on 17 June concerning the enhancement of investigations into organised crime, calling for further cooperation on the exchange of financial information, the work of Financial Intelligence Units to be adapted, the legal framework for virtual assets to be improved and for Member States to consider the imposition of harmonised cash payment limits.



ECJ Decision - *KrakVet Marek Batko* Case C-276/18 on Cooperation Between Member States Tax Authorities for VAT Purposes

The Court of Justice of the European Union has delivered its decision in [Case C-276/18, *KrakVet Marek Batko sp.k. v Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága*](#), a request for a ruling from the Hungarian Administrative Court. The case concerns a pet goods company established in Poland, which made supplies to Hungarian customers using a Hungarian version of its website. The company applied distance sales rules, applying Polish rates of VAT on the basis that the supplies made were under the relevant threshold. The supplies were transported to Hungary using a Polish transportation company, who delivered the goods to two distribution points in Hungary. From the distribution points, the goods were then delivered to customers by a Hungarian transportation company.

The company applied to the Polish tax authorities for a ruling on the place of supply concerning the Hungarian customers, who took the view that the transactions were carried out in Poland. The Hungarian tax authorities subsequently carried out inspections concerning the supplies, and required KrakVet to pay the difference in VAT, together with a penalty and interest and a fine for falling to comply with its obligation to register for VAT in Hungary.

The Court was asked to consider “*the scope of the obligation of cooperation between the authorities of the Member States under Regulation No 904/2010 and, second, on the interpretation of the concept of supplies of goods dispatched or transported ‘by or on behalf of the supplier’, within the meaning of Article 33 of Directive 2006/112*” and whether “*it is possible for the Hungarian tax authorities, in the light of the principle of fiscal neutrality and the objective of avoiding double taxation, to adopt a different position from that of the Polish tax authorities*”.

The Court held, in Paragraph 97 of the decision that:

Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and Articles 7, 13 and 28 to 30 of Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax must be interpreted as not precluding the tax authorities of a Member State from being able, unilaterally, to subject transactions to value added tax treatment different from that under which they have already been taxed in another Member State.

Article 33 of Directive 2006/112 must be interpreted as meaning that, when goods sold by a supplier established in one Member State to purchasers residing in another Member State are delivered to those purchasers by a company recommended by that supplier, but with which the purchasers are free to enter into a contract for the purpose of that delivery, those goods must be regarded as dispatched or transported 'by or on behalf of the supplier' where the role of that supplier is predominant in terms of initiating and organising the essential stages of the dispatch or transport of those goods, which it is for the referring court to ascertain, taking account of all the facts of the dispute in the main proceedings.

EU law and, in particular, Directive 2006/112 must be interpreted as meaning that it is not necessary to find that transactions by which goods sold by a supplier are delivered to purchasers by a company recommended by that supplier constitute an infringement of the law when, on the one hand, there is a connection between the supplier and that company, in the sense that, irrespective of that delivery, the company takes charge of some of the supplier's logistical needs, but, on the other hand, the purchasers remain free to make use of another company or personally collect the goods, since those circumstances are not liable to affect the finding that the supplier and the transport company recommended by it are independent companies which engage, on their own behalf, in genuine economic activities and, consequently, those transactions cannot be classified as abusive.

The decision is available [here](#) in all official EU languages.



EU Commission Publishes Brexit VAT Update

The European Commission has published an updated [Notice to Stakeholders](#) concerning the EU rules applicable to services in light of the UK withdrawal from the EU.

The Notice confirms that during the transition period the UK continues to be subject to the EU VAT Directive in respect of transactions for services made during this period. Thereafter, the Notice sets out that for supplies of services, suppliers from the UK will need to register under the mini-one-stop-shop as a supplier in the relevant Member States. Additionally, requests for cross-border VAT refunds between the UK and Member States will be subject to the 13th VAT Directive following the transition period.

A [EU-UK statement](#) issued last week confirms that the UK will not entertain an extension of the transition period, and states that significant progress still needs to be made to agree an exit deal. It indicates that negotiations will be intensified in the coming months.



ECOFIN Report to EU Council on Tax Issues Approved

The EU Council has now approved the [report](#) prepared by the ECOFIN Council providing an overview of the progress on tax policy work achieved under the Croatian Presidency of the EU.

The report highlights in particular the agreement reached on the legislative package on mandatory transmission and exchange of VAT relevant payment information, the adoption of the directive on the common system of value added tax as regards the special scheme for small enterprises, the conclusions on the future evolution of administrative cooperation in the field of taxation in the EU and the negotiations on amending the administrative cooperation directive to defer deadlines for exchange of information as a result of the coronavirus crisis.

The report also contains a detailed update concerning other significant tax files, such as CCTB, the EU digital taxation package and the EU position on international negotiations and progress on the VAT Action Plan.

Germany will take over the presidency of the European Union on 1 July 2020.



The selection of the remitted material has been prepared by
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia



[Twitter](#)

[LinkedIn](#)