BRUSSELS I 24 JUNE 2019

The Netherlands to Introduce Legislation on Beneficial Ownership Following "Danish Cases"

The Dutch State Secretary of Finance, answering questions from Members of Parliament on 14 June 2019, reportedly announced that the Netherlands intends to introduce legislation in September this year that would amend rules and the burden of proof for foreign intermediate holding companies that qualify on the basis of "relevant substance" requirements for dividend withholding tax exemptions.

The questions from Ministers related to the decisions handed down by the Court of Justice of the European Union in the "Danish Cases", in which the Court held that a general anti-abuse provision can be relied on by a Member State, such that no domestic legislative provision is necessary in order for a State to refuse entitlement to the exemption. CFE Tax Advisers Europe acknowledges that the "Danish beneficial ownership cases" address a number of important and timely issues, especially with regard to the concept of abuse in EU law. CFE's ECJ Taskforce's Opinion Statement concerning the decision can be viewed here.

The Secretary of Finance stated that the Danish decisions are still under review by the government, but opined that the Dutch legislation concerning anti-abuse rules is generally consistent with the Danish cases, such that a company that meets the Dutch substance requirements is generally entitled to safe harbour. However, the Secretary of Finance stated that the new legislation will include minor changes to burden of proof requirements concerning the substance requirements, as well as introduce changes that allow the Dutch tax administration to challenge perceived abusive structures, concerning both EU and non-EU holding companies, irrespective of whether the Dutch substance requirements are met. However, the Secretary of Finance reportedly stated the amendments would not lead to materially different outcomes in rulings as compared with the application of current rules.

The legislative proposal will be published on 17 September 2019, the day the Dutch budget will be delivered.

OECD Expands Functionality of MLI Matching Database

The OECD has now updated its MLI Matching Database to include information concerning the entry into force date of the MLI in each jurisdiction. The database is compiled from information gathered during the process of countries becoming signatories to the MLI. The database is intended to be used in order to get an overview on the way in which the MLI modifies tax treaties covered by the MLI through matching the information compiled from signatories.

The OECD has invited comments and suggestions concerning the changes and improvements made to the database. More information on the functioning of the database is available here. Comments can be submitted using this e-mail address.

AG Kokott Delivers Opinion on Hungary's Telecom Turnover Tax

Advocate General Kokott has handed down her opinion in the case of Vodafone Magyarország, concerning a tax imposed by the Hungarian tax administration on Vodafone's revenue according to its turnover. The outcome of the case is being closely monitored, as it will have implications for the proposed EU turnover tax on digital services.

AG Kokott sets out at paragraph 20 of her Opinion that the CJEU was asked to consider whether legislation which has the effect that the tax burden falls on foreign-owned taxable persons is indirectly discriminatory and incompatible with EU law, whether a Member State is precluded from imposing a turnover tax calculated on a progressive tax rate and whether, if the tax burden falls on foreign-owned taxable persons, the legislation is discriminatory and amounts to prohibited State aid. Finally, she sets out that the Court was asked to consider whether the tax was compatible with the VAT Directive as it was a special turnover tax.

AG Kokott held in relation to whether the tax was compatible with the VAT Directive that the special tax did not fit the characteristics of VAT as it did not apply to all transactions and was not passed on to the consumer, and Hungary was therefore not prevented from applying the tax by the VAT Directive.

As to whether imposing a turnover tax on a progressive tax rate is discriminatory, AG Kokott held that the principle of the welfare state justifies a progressive tax rate imposing a heavier burden on those with greater financial capacity, as does the administrative simplicity of imposing a tax on turnover rather than profit, and does not constitute a selective advantage for lower-turnover undertakings, nor State aid. Similarly, AG Kokott held that *"different taxation arising from a progressive rate does not constitute an indirect restriction of freedom of establishment, notwithstanding whether larger undertakings are taxed more heavily or owned by foreign shareholders."* AG Kokott opined this could only be the case if conduct amounting to an abuse of rights can be demonstrated concerning the Member State.

The decision of the Court is expected in the coming months. The opinion of AG Kokott is not binding on the Court's decision.

OECD Releases Additional Transfer Pricing Profiles

The OECD has made available transfer pricing profiles for Chile, Finland and Italy. Previously released profiles concerning Colombia and Israel have also now been updated. This increases the number of profiles available to 55 countries.

4.

The profiles concern OECD countries as well as countries who are members of the Inclusive Framework on BEPS, detailing current national legislation and the implementation in practice of the arm's length principle, as well as reflecting the outcomes and changes to Transfer Pricing Guidelines from the 2015 Reports on BEPS Actions 8 – 10 and the 2013 changes made to the OECD Transfer Pricing Guidelines.

Other key transfer pricing aspects, including information on pricing methods, intangible property, intra-group services, safe harbours, transfer pricing documentation and administrative approaches to handling disputes are also included in the profiles.

5.

DG TAXUD Survey on Dissemination Tools in the Area of Taxation

The European Commission is conducting an online survey targeting users of DG TAXUD's dissemination tools. The survey requests input about stakeholders' experiences using DG TAXUD's dissemination tools, such as the Taxes in Europe Database, the Taxation Trends Report, the Tax Policies in the EU Survey and the Taxation Papers series.

The survey is open until 4 July 2019. The results of the survey will help Commission to improve the organisational and communication aspects of those tools. We invite you to partake in the survey via this link.

Follow us !

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