CFE tax advisers europe

BRUSSELS I **FEBRUARY 2019**

1. Taxation of Amazon Cloud Services in the USA

The revenue department of the state of Iowa, in the United States, declared that the supply of Amazon's Simple Storage Service should be subject to tax, and told the tech giant to collect taxes retroactively as from January 1st 2019.

The Declaratory Order, published on 06 February, came as a response to the request from Amazon Web Services Inc., in which Amazon asked for guidance on the taxability of its Simple Storage Service and Elastic Compute Cloud Service under Senate File 2417. The File refers to a broad tax reform measure enacted in 2018 that expanded the sales and use tax regime to digital goods, ride-sharing services, subscription services, online sellers, and online travel.

Amazon Simple Storage Service operates as a remote storage service, allowing customers to store and retrieve data, applications, software, and other electronic files through an internet connection. According to the Iowa revenue department, the service fits within the category of services the legislature intended to tax. The data transfer fees associated with the service will also be subject to Iowa sales tax.

As far as Amazon Elastic Compute Cloud Service is concerned, however, the department said Amazon does not have to collect taxes. The transactions regarding the service constitute sales of computer-related services rather than sales of a digital product; customers are purchasing remote computing power rather than a digital product.

2. OECD Extends Digital Tax Consultation Deadline

On 13 February 2019, the OECD published a consultation document, outlining proposals being considering by the members of the Inclusive Framework as part of its task of reviewing of international tax rules arising from the tax challenges of the digital economy. The public consultation will now run until Wednesday, 6 March 2019. Thereafter, the Inclusive Framework will hold a public consultation on 13 and 14 March 2019 in Paris as part of the meeting of the Task Force on the Digital Economy.

The consultation was launched following publication of a Policy Note identifying that discussions at OECD level will be based around two pillars. The first pillar will focus on how the existing rules that divide the right to tax the income of multinational enterprises among jurisdictions could be modified to take into account the changes that digitalisation has brought to the world economy. The second pillar aims to resolve remaining BEPS issues and will explore two sets of interlocking rules designed to give jurisdictions a remedy in cases where income is subject to no or only very low taxation.

The consultation document invites input concerning a number of technical and policy matters, in order to assist the Inclusive Framework with its task of developing a solution for inclusion in its final report to the G20, due in 2020. Comments should be addressed to the Tax Policy and Statistics Division, Centre for Tax Policy and Administration, and should be submitted in Word format via e-mail to TDFE@oecd.org. All comments submitted will be made publicly available by the OECD in due course.

3. Armenia Join OECD BEPS Inclusive Framework

Armenia have now joined the OECD's BEPS Inclusive Framework. Members of the Inclusive Framework have the opportunity to work together on an equal footing with other OECD and G20 countries on implementing the BEPS package consistently and on developing further standards to address remaining BEPS issues.

There are now 128 jurisdictions that are participating in the project.

4. Botswana Passes New Transfer Pricing and Interest Deductibility Legislation

As from 01 July 2019, new transfer pricing legislation and new interest deductibility legislation will come into operation in Botswana, passed in its 2018 Finance Act.

The new transfer pricing legislation now requires taxpayers to compute their taxable income in accordance with the arm's length standard. The new legislation will encourage voluntary compliance and strengthen the Botswana Unified Revenue Service's efforts to combat non-compliance.

The new interest deductibility legislation is based on a fixed ratio rule, which limits an entity's net interest deductions to 30% of its earnings before interest, taxes, depreciation and amortisation (EBITDA), except for a company whose main business is banking or insurance. This is a straightforward rule to apply and ensures that an entity's interest deductions are directly linked to its economic activity. It also directly links these deductions to an entity's income, which makes the rule reasonably robust against planning.

African tax administrations report that transfer pricing represents one of the highest risks to their tax bases. To that end, having effective legislation is a key element in African countries' fight to combat abusive transfer pricing practices and is also important in providing taxpayers with greater tax certainty and encouraging voluntary compliance.

5. New Zealand to Open Consultation on Digital Services Tax for Multinationals

The New Zealand government announced on 19 February that it will open a public consultation in May on the design of a Digital Services Tax (DST) on the revenue of multinationals operating in the country. The Finance Minister Grant Robertson said that highly digitalised companies - social media networks, trading platforms and online advertising - currently earn a significant income from New Zealand consumers, but they are not liable for income tax.

The digital services tax would serve as an interim measure until the OECD reaches agreement on a coordinated global method to address the tax challenges of digitalisation by 2020.

6. Guernsey Deposits its Instrument of Ratification for the Multilateral BEPS Convention

On 12 February, Guernsey joined the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The BEPS convention aims to combat tax avoidance by multinational enterprises (MNEs) through prevention of Base Erosion and Profit Shifting (BEPS).

The BEPS multilateral instrument was negotiated within the framework of the OECD G20 BEPS project and enables countries and jurisdictions to swiftly modify their bilateral tax treaties to implement some of the measures agreed.

7. Switzerland and UK Agreement on Post-Brexit Trade Relationship

Switzerland and the UK have signed in Bern on 11 February a trade continuity agreement that will serve as a basis for their trading relationship after Brexit. The accord replicates the majority of the trade agreements that currently govern relations between Switzerland and the European Union.

Anne-Marie de Weck, President of the British-Swiss Chamber of Commerce said: *"It is imperative for our members, both British and Swiss businesses, that trade continues. Switzerland is the UK's seventh largest export market, third largest non-EU market, eighth largest foreign direct investor, and tenth top destination for UK outward direct investment. It is paramount that the British and Swiss governments have secured the continuation of a huge trading relationship with this agreement."*

The agreement between Switzerland and the UK will come into force as soon as the Swiss-EU agreements cease to apply to relations between Switzerland and the UK.

8. New Indonesian E-Commerce Tax Obligations

The Ministry of Finance of Indonesia has confirmed that, as from 01 April 2019, online marketplaces and sellers must comply with VAT and income tax obligations set out in Indonesia's Regulation Number 210/PMK.010/2018.

The regulation will compel those sellers and marketplaces making supplies worth IDR4.8bn (approximately USD 337.000) or more a year to collect value-added tax on their sales to Indonesian consumers and remit these amounts to the tax authority. They must also levy a luxury sales tax where appropriate.

Beyond that, marketplaces will be obligated to report sales data to the tax agency about those making supplies to Indonesian consumers on their platforms. Traders and services providers will be obligated to provide an Indonesian taxpayer number to marketplaces.

The regulation also affects online retailers, businesses that sell through classified ads, those that offer daily deals, and those transacting with consumers through social media.

9. EU Code of Conduct Group Warned Six Jurisdictions on Harmful Tax Regimes

On 01 February, the European Union Code of Conduct Group (Business Taxation) sent letters to Barbados, Belize, Curaçao, Mauritius, Saint Lucia and Seychelles seeking commitment by theses jurisdictions on the replacement of harmful preferential tax regimes with measures of similar effect.

In the letters, sent by the General Secretariat of the Council, the Group stated that the introduction of new preferential tax measures had been identified, such as facilitating offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction, exemption of foreign income and Partial Exemption system.

The Group stressed that they are expecting to receive a commitment at a high political level that the jurisdictions will abolish the harmful tax regimes, and that as long as those assurances are received and no other criteria have been failed, the jurisdictions will not be recommended to the Council of the EU to be included in the EU list of non-cooperative jurisdictions for tax purposes.

10. Global Tax Advisers Platform (GTAP) Global Conference

Save the date for the Global Tax Advisers Platform (GTAP) Global Conference, to be held in Turin, Italy, on Thursday 03 October 2019 from 9am to 4pm, on the topic of "Tax and the Future".

CFE Tax Advisers Europe, together with the Asia-Oceania Tax Consultants' Association ("AOTCA") and the West African Union of Tax Institutes ("WAUTI"), established the Global Tax Advisers Cooperation Forum (GTACF) in 2013. In 2018, with the signing of the historic Ulaanbaatar Declaration, the GTACF was renamed the Global Tax Advisers Platform ("GTAP"), in order to further reflect the revised purpose and mission of the organisation.

GTAP is an international platform, representing more than 600,000 tax advisers in Europe, Asia and Africa, that seeks to bring together national and international organisations of tax professionals from all around the world. The principal aim of GTAP is to promote taxpayer and tax advisers' interests by ensuring the fair and efficient operation of the global tax framework, including recognition of the rights and interests of taxpayers, and the role of tax professionals.

More details about the conference and line-up of speakers will be available in due course.

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