MOORE STEPHENS

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European Tax Brief

Tax

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Editorial

Welcome to the latest issue of Moore Stephens *European Tax Brief*. This newsletter summarises important recent tax developments of international interest taking place in Europe and in other countries within the Moore Stephens European Region. If you would like more information on any of the items featured, or would like to discuss their implications for you or your business, please contact the person named under the item(s). The material discussed in this newsletter is meant to provide general information only and should not be acted upon without first obtaining professional advice tailored to your particular needs. *European Tax Brief* is published by Moore Stephens Europe Ltd in Brussels. If you have any comments or suggestions concerning *European Tax Brief*, please contact the Editor, Zigurds Kronbergs, at the MSEL Office by e-mail at zigurds.kronbergs@moorestephens-europe.com or by telephone on +32 (0)2 627 1832.

Inside

Belgium

Belgium introduces mandatory and annual transfer-pricing documentation for MNE

With effect from 2 June, Belgian legislation requires certain multinational enterprises (MNEs) to provide and keep transfer-pricing documentation.

First, all Belgian companies that are members of a multinational group exceeding one of the following thresholds in their individual and annual financial statements have to provide each year a master file and a local file.

- EUR 50 million of operating and financial income (excluding exceptional income)
- A balance-sheet total of EUR 1000 million
- An average of 100 full-time equivalent employees
- An additional condition (in respect of the local file only) is that the company engage in intercompany transactions of a value of more than EUR 1 million per year. The format of these files will be determined by a Royal Decree. A comparability study and use of one of the five transfer-pricing methods specified by the OECD will be obligatory.

Second, country-by-country (CBC) reporting has been introduced for all Belgian-resident ultimate parent companies of a multinational group with a consolidated turnover of over EUR 750 million. Where the ultimate parent company is not resident in Belgium, the Belgian member of the group will be required to file an annual CBC report where:

- The ultimate parent company is located in a jurisdiction that does not provide for CBC reporting in its legislation
- The country of the ultimate parent company does not provide for automatic exchange of CBC reports with Belgium
- The Belgian tax authorities do not receive the CBC report due to other reasons than those listed above and there is systemic failure.

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EU court rejects Belgium's initial appeal against excess profits tax clawback

The European Court of Justice has rejected Belgium's application for interim relief in the country's ongoing battle against the European Commission's ruling that the excess profits tax régime, under which multinationals could apply for a reduction of their tax liability in Belgium by comparison with the hypothetical profit that a stand-alone company would have made in a comparable situation, constitutes unlawful State Aid under the EU treaties.

Interim relief would have allowed Belgium to suspend preparatory work for the recovery of the tax waived while the outcome of its main appeal against the ruling was still pending. However, the President of the General Court has held that Belgium had failed to demonstrate it would suffer 'serious and irreparable harm' if the interim relief order were not granted.

The main appeal continues.

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European Union

New Union Customs Code takes effect

The European Union's new Customs Code (Regulation (EU) No 952/2013) took effect on 1 May. It completely replaces the existing Customs Code introduced in 1992 as subsequently amended.

The new Code also makes substantial changes to EU customs law, including, for example, the inclusion of royalties and licence fees in the customs value of goods.

Although the substantive provisions of the new Code are now in force, there is a transitional period of four years, ending in 2020, allowing for development of the new IT systems required.

The EU Customs Code applies uniformly across all 28 Member States with regard to imports from third countries at their first point of entry into EU customs territory.

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EU launches VAT Action Plan

Earlier this month, the European Commission launched its VAT Action Plan, presenting it as a "first step towards a single EU VAT area which is equipped to tackle fraud, to support business and help the digital economy and e-commerce".

The Commission's proposals include:

- A definitive system for cross-border trade based on the destination principle (i.e. VAT to be charged at the rates applicable in the country where the customer is established)
- Further immediate measures to tackle VAT fraud
- More flexibility for Member States on the use of reduced rates
- A VAT simplification package for SMEs

Detailed proposals will follow later this year and in 2017.

Changes in the VAT rules need the unanimous support of Member States.

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EU agrees country-by-country reporting Directive

The European Council agreed at its meeting on 25 May to adopt the draft Directive on mandatory country-by-country (CbC) reporting for multinational groups with a consolidated annual turnover of EUR 750 million or more.

Reporting will have to start with respect to the 2016 financial year. Groups with parent companies based outside the European Union may opt for 'secondary reporting' via their EU subsidiaries from 2016, mandatory from 2017.

The CbC reports will be automatically exchanged between the Union's 28 national tax authorities.

The Directive implements BEPS Action 13 throughout the European Union.

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EU minimum VAT rate to stay at 15%

The minimum standard rate of VAT throughout the European Union is to remain at 15%, at least until the end of 2017, under a Directive adopted by the European Council of Finance Ministers (ECOFIN) on 25 May.

EU publishes Anti-Avoidance Directive

The European Union has published the official text of the Anti-Avoidance Directive in the Official Journal, as Directive 2016/1164/EU.

Member States are obliged to transpose the Directive into their domestic law no later than 31 December 2018. With one exception, the provisions of the Directive must apply from 1 January 2019.

The Directive contains the final form of most of the proposals we reported on in April in Volume 6 Issue 1 of European Tax Brief, but some proposals had to be modified and one – the 'switch-over rule' – had to be dropped in order to achieve unanimous agreement in the 28-member European Council. In brief, the Directive contains:

- Limits on the deductibility of interest based on a percentage of earnings before tax, depreciation and interest
- Exit taxation (with the option of deferment and instalment payments on unrealised gains) for companies leaving the taxing jurisdiction of a Member State (many Member States already have an exit tax)
- A general anti-abuse rule
- CFC (controlled foreign company) rules to subject certain passive income of subsidiaries in low-tax jurisdictions to tax in the parent entity's home country. Again, many Member States have a version of CFC rules
- Hybrid-mismatch prevention, to counteract cross-border double deductions or double non-taxation of the same transaction or instrument

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European Commission announces further tax transparency proposals

On 5 July, the European Commission announced further proposed measures to enhance tax transparency and fight tax evasion and avoidance, in the wake of the Panama Papers revelations.

Key actions include:

- *Further tax information.* In order to reveal the ultimate beneficiary of an entity, tax authorities should have access to other countries' national anti-money laundering and due-diligence information. This would be achieved by further amendment of the Administrative Cooperation Directive
- *Extending authorities' information.* With respect to the Anti-Money Laundering Directive, due-diligence controls would be extended to existing as well as new accounts
- *Cross-border transparency on beneficial ownership.* The Commission is to examine how tax authorities could automatically exchange information on the beneficial owners of companies and trusts
- *Oversight of tax advisers' activities.* The Commission is to examine how to 'shed more light' on tax advisers' activities and create disincentives for promoters and enablers of aggressive tax planning
- *Promoting good governance.* The Commission is already working with the Code of Conduct Group to identify countries for the blacklist of jurisdictions not respecting good tax-governance standards and to encourage others to adopt or improve their governance in this area
- *Protecting whistleblowers.* The Commission will assess the need for horizontal or additional sectoral measures to increase the protection afforded to those who disclose cases of avoidance and evasion

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EU adopts uniform VAT rules on vouchers

The European Council has adopted a Directive regularising the treatment of single-purpose and multi-purpose vouchers for the purposes of value added tax.

The Directive defines a ‘voucher’ as an instrument that carries an obligation to accept it as consideration in whole or in part for a supply of goods and services and identifying either those goods or services or potential suppliers either on the voucher itself or in related documentation. It then distinguishes between a ‘single-purpose voucher’, which is a voucher where the place of supply and the VAT due on the supply are known at the time it is issued, and a ‘multi-purpose voucher’, which is any other kind of voucher falling within the general definition.

It then goes on to provide that each transfer of a single-purpose voucher made by a taxable person acting in his own name is to be treated as a supply of the goods or services to which the voucher relates. The actual handing over of the goods or the provision of the services is not to be regarded as an independent transaction.

With multi-purpose vouchers on the other hand, the actual handing over of the goods or the provision of the services in return for the voucher is the transaction to trigger the VAT liability, whereas each preceding transfer of the voucher is not to be subject to VAT. The taxable consideration for the transaction is to be the consideration paid for the voucher or, where that is not known, the monetary value indicated on the voucher or related documentation, less the VAT relating to the goods or services supplied.

The Directive also prescribes how transactions are to be treated where third parties are involved (e.g. where the supplier of the goods is not the person who issued the single-purpose voucher concerned).

Member States are required to transpose the Directive into their national legislation no later than 1 January 2019.

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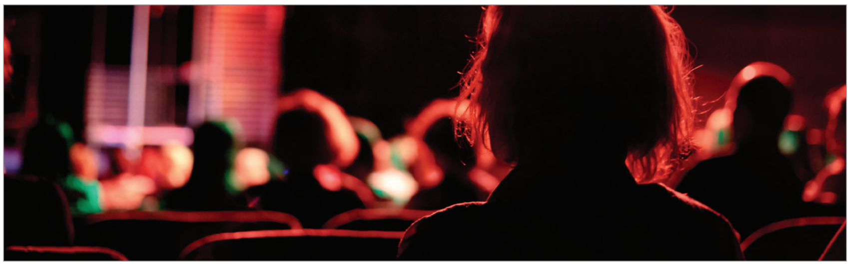
No VAT exemption for card-handling fees

The Court of Justice of the European Union (CJEU) has held that a card-handling fee charged to purchasers by the provider of an online cinema-ticket purchasing service does not qualify for exemption from VAT as a financial service.



The case (*Bookit Ltd v Commissioners for Her Majesty’s Revenue and Customs, Case C-607/14*), which was referred from the United Kingdom, concerned the correct interpretation of Article 135(1)(d) of the VAT Directive, which provides that ‘transactions ... concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments ...’ shall be exempt from VAT. This provision is transposed into UK law as Value Added Tax Act 1994 Schedule 9 Group 5.

The taxpayers, Bookit Ltd, were a wholly owned subsidiary of Odeon Cinemas, which operates a chain of high-street cinemas in the United Kingdom. The service provided by Bookit was one that enabled customers of Odeon to purchase cinema tickets online. In addition to the price of the ticket, Bookit charged each customer paying with a credit or debit card a ‘card-handling fee’ of approximately GBP 0.70. It was the VAT treatment of that fee that was at issue between Bookit and HMRC.

The Court held that in order for the exemption relating to transfers of funds to have effect, the taxable person had to perform a specific function essential to the transfer of ownership of funds and not merely provide ‘technical and administrative’ services for facilitating a transfer. In the circumstances, where the card-handling service consisted solely of the exchange of information concerning the purchaser between the service provider and an intermediary bank (‘the merchant acquirer’) with a view to receiving payment for a product or service, the exemption under Article 135(1)(d) did not apply to the services supplied by Bookit.

The questions of whether the card-handling services were a separate supply (by Bookit to the purchaser) or ancillary to the supply of cinema tickets (i.e. a composite supply)was for the national court to determine.

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Withholding tax must allow for expense deduction

In a potentially far-reaching judgment, the Court of Justice of the European Union (CJEU) has held that Portugal's withholding tax on the interest income of foreign financial institutions must be levied net of defined expenses and not gross, as at present.

In *Brisal-Auto Estradas do Litoral SA & KBC Finance Ireland v Fazenda Pública* (Case C-18/15), Brisal, a Portuguese company, paid interest on a loan to an Irish bank (KBC Finance). Under Portuguese law and the Portugal-Ireland tax treaty, Brisal deducted withholding tax of 15% from the gross interest. In the absence of a treaty, the withholding rate would have been 20%. By contrast, a resident financial institution receiving interest income from a Portuguese borrower would be taxed at 25% of the net interest, after deduction of relevant expenses, by way of normal assessment and not withholding.

The borrower and lender appealed to the Portuguese courts, on the grounds that the difference in treatment between resident and non-resident lenders was discriminatory and thus in breach of Article 56 TFEU, which guarantees the freedom to provide services and outlaws discrimination against service providers from other Member States. The question was referred to the CJEU by the Supreme Administrative Court of Portugal.

The CJEU held that Article 56 did not preclude the different treatment (withholding at source versus assessment-based taxation) of resident and non-resident financial institutions. Nevertheless, by not permitting non-residents to deduct business expenses directly related to the activity concerned, whereas residents were so permitted, the Portuguese legislation was indeed discriminatory, even given the lower withholding rates stipulated by the domestic law and the double tax treaty, and could not be justified by overriding reasons in the public interest.

Whereas it was for the national courts to decide what expenses could be regarded as directly related to earning the interest income and thus deductible, the CJEU suggested that these might include travel and accommodation expenses, legal or tax advice, financing costs and an appropriate fraction of general overheads.

The case has implications beyond Portugal, because many Member States levy final withholding taxes on a gross basis on interest income paid to non-resident lenders. The judgment could also be extended to other forms of income from capital, such as dividends.

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EU proposes extended CbC reporting

On 12 April, the European Commission broadened its previous country-by-country reporting requirements for multinationals to include an aggregate figure for total taxes paid outside the European Union.

The Commission's previous proposals, addressed to all companies and groups with global annual turnover exceeding EUR 750 million, contained only the requirement to report the profit and tax accrued and paid in each EU Member State, together with contextual information concerning the number of employees and the nature of their activities in each jurisdiction.

The proposals, which take the form of amendments to the Accounting Directive (2013/34/EU), still have to be agreed by the European Council and the European Parliament.

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European Union wishes to reduce VAT rate on e-books

The European Commission has issued a consultation document with a view to equalising the VAT rates on electronic publications with those for their paper equivalents.

Currently, whereas printed books, newspapers etc are taxed at a reduced rate in many Member States, no reduced rate may apply to their digital equivalents, which are taxable at the standard rate.

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France

France to make trust register public

France has enacted legislation making the public register of trusts open to the public as from 30 June 2016.

The register, which holds details of approximately 16,000 trusts, contains information relating to each trust, including the names of the trustees, settlors and beneficiaries.

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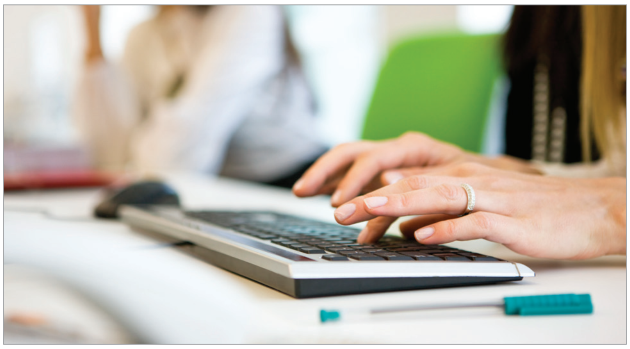

Germany

Germany publishes 10-point action plan against tax havens

In the wake of the Panama Papers revelations and the ongoing drive against aggressive tax avoidance and tax evasion, the German Government has published a 10-point action plan, although some of the points are more in the nature of a wish list, which will require international cooperation.

The points include:

- Deterring banks from promoting aggressive tax avoidance
- Increasing administrative sanctions on companies for misconduct
- Harmonising international blacklists of tax havens and non-cooperative jurisdictions
- Global implementation of the new standard on automatic exchange of information (AEOI)
- Placing pressure on Panama to join the AEOI system and reform its company law

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Greece

Greece agrees to further VAT rise

The Greek Government has agreed to a further one percentage point rise in the standard rate of VAT, which accordingly increased to 24% on 1 June.

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Greek property-tax rules clarified

The Greek tax authorities have clarified that for the tax year 2015, the deemed income from owner-occupation of property will be based on the objective value (fair market value for tax purposes) of the property concerned as at the end of the year (i.e. 31 December 2015). The taxpayer or legal entity is deemed to receive an income of 3% of that value for the purposes of income tax.

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Ireland

Ireland publishes APA guidelines

Revenue Ireland, the Irish tax authority, has launched a formal bilateral Advance Pricing Agreement (APA) programme with effect from 1 July.

To accompany the launch, it has published an Operational Manual setting out its guidelines on the operation of the programme, including a list of information that will be automatically exchanged with other EU Member State tax authorities under Directive 2015/2376/EU.

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Luxembourg

Luxembourg to introduce temporary capital gains exemption

Capital gains arising from the disposal of immovable property held for at least two years will qualify for additional relief from income tax for the period from 1 July 2016 to 31 December 2017. Normally, such gains are taxed at 50% of the global tax rate, but will now be taxed at just 25% of the global tax rate for the period indicated. This means that the tax rate on these gains will not exceed 10.7% or 10.9%.

Gains from the disposal of an individual's main residence remain exempt from tax.

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Automatic information exchange broadened

On 23 July 2016, Luxembourg enacted a law on mandatory automatic exchange of tax information, thereby implementing EU Directive 2015/2376/EU in Luxembourg's domestic legislation. The new Act widens the scope of automatic exchange of information on cross-border tax rulings and advance pricing agreements (APAs).

This means that as from 1 January 2017, the Luxembourg tax authorities will exchange information on rulings and APAs with other EU Member States. The information exchanged will include all relevant rulings and APAs issued, amended or renewed as from 1 January 2012, provided they were still valid on 1 January 2014.

Rulings and APAs are excluded where they involve exclusively natural persons or persons (other than those carrying on predominantly financial or investment activities) with a turnover below EUR 40 million at a group level during the tax year preceding the issue of the ruling or APA.

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Netherlands

Court extends Dutch fiscal-unity range

The Netherlands Court of Appeal has ruled that a group of companies whose parent company is resident in Israel may not be excluded from forming a fiscal unity (tax-consolidated group).

Under Netherlands law, only companies resident in the Netherlands (or Netherlands permanent establishments) whose parent company or intermediate holding company is resident in the Netherlands or in another EEA state (the EU 28 + Iceland, Liechtenstein and Norway) may form a fiscal unity.

Although Israel is not an EEA state, it has a non-discrimination article in its tax treaty with the Netherlands, and it was on that basis that the Netherlands court reached its decision.

The decision has effect beyond Israel, since groups with a parent in other jurisdictions with a similar non-discrimination article in their treaty with the Netherlands should now also be eligible in principle to form a fiscal unity.

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Norway

Norway to drop VAT tax-representative requirement

Norway is to drop the requirement that foreign taxable persons from another EEA state appoint a Norwegian-based tax representative when registering for VAT in Norway, provided that the EEA state concerned has an agreement with Norway providing for exchange of information and mutual administrative assistance in the recovery of VAT.

It was asked to do so by the EFTA Surveillance Authority (broadly equivalent to the European Commission for EFTA members as regards EEA matters), in order to align with EU VAT rules.

The date on which the new rule takes effect is not yet clear.

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OECD

Over 20 other jurisdictions join beneficial-ownership initiative

As many as 21 other jurisdictions have already joined the initiative taken jointly on 14 April by 'the EU five' (France, Germany, Italy, Spain and the United Kingdom) to share data on the beneficial ownership of companies and trusts. The five called on the OECD to draw up a global standard.

The new participants are Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, Malta, the Netherlands, Portugal, Romania, Slovakia, Slovenia and Sweden, together with the UK's Crown dependencies Gibraltar, the Isle of Man and Montserrat.

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OECD calls for comment on aspects of multilateral treaty instrument

The OECD has called for comment on a draft document discussing certain technical aspects of the proposed multilateral instrument that would amend bilateral tax treaties in line with the BEPS (base erosion and profit shifting) Action Plan.

A public consultation meeting was held in Paris on 7 July, following consultation.

The instrument itself is the subject of confidential intra-governmental discussions among the participating nations.

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OECD incorporates BEPS amendments into Transfer Pricing Guidelines

The OECD's Council has agreed that the amendments proposed under BEPS Action Plan Items 8-10 be incorporated into the OECD's Transfer Pricing guidelines (Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations), which many countries in both the developed and developing worlds use or refer to in their own transfer-pricing legislation and practice.

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OECD releases formats for information exchange

The OECD has released standardised IT formats for the exchange of information on APA rulings (relating to BEPS Action 5) and for providing feedback on information received under the Common Reporting Standard.

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Slovakia

Slovakia to cut corporate tax

The new four-party coalition government headed by Prime Minister Robert Fico has agreed that Slovakia's rate of corporate income tax will be reduced from 22% to 21%, with effect from 1 January 2017.

Fico was also Prime Minister of the previous government, which consisted solely of his centre-left SMER party.

Slovakia assumed the rotating presidency of the European Union on 1 July 2016.

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Latvia joins the OECD

Latvia became the 35th member state of the Organisation for Economic Cooperation and Development (OECD) with effect from 1 July.

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Spain

Court confirms use and enjoyment for VAT on third-party services

The Spanish Supreme Court has confirmed that the use and enjoyment override for the application of VAT on services applies even where the recipient of the services does not use them directly.

Under EU VAT law, when a business supplies cross-border services to another business, the place of the supply and hence the liability to VAT, is normally where the customer is located. However, Member States have the option to override this rule and substitute the place where the service is effectively used, as Spain has done.

In the case in question, a Spanish company sold telephone cards, entitling the user to a fixed number of call minutes, to a business located in Andorra. The Andorran customer did not use the cards itself but sold them on to Spanish users (the cards were valid solely for use in Spain). Andorra is not a member of the European Union.

The Spanish company did not charge VAT on the supply, as it believed that the use-and-enjoyment rule did not apply where the service was used by a third party and not directly by the customer.

This was also previously the view of the Spanish tax authorities, but they have changed their stance and assessed the Spanish supplier to the outstanding VAT.

The Supreme Court has upheld the tax authorities' position. According to Spanish law and practice, the ruling does not become a binding precedent until it has been made a second time.

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Sweden

Sweden mulls VAT registration threshold

The Swedish Government has proposed the introduction of a VAT registration threshold, albeit a very low one. Unlike most Member States, Sweden does not currently have such a threshold, which exempts small businesses with turnovers below that threshold from the obligation to register for VAT.

The proposed threshold is an annual (VAT-exclusive) turnover of SEK 30 000 (approx. EUR 3175). Businesses whose turnover had neither exceeded this threshold in the previous two tax years nor was likely to exceed it in the current tax year would not be obliged to register for VAT.

If adopted, the threshold is likely to apply from 1 January 2017.

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United Kingdom

Tax implications of Brexit

Following the momentous vote in the EU Referendum held on 23 June, which resulted in a narrow majority in favour of the United Kingdom's leaving the European Union, there seems no immediate hurry on the behalf of the new Government to invoke Article 50 TFEU and thus begin the irreversible process of withdrawal. The new Prime Minister, Theresa May, has now confirmed this will not take place before the end of 2016 at the earliest.

How will the result of the EU referendum affect the UK's tax system?

In the short term, the answer is 'not at all'. For the moment, and probably for most of the next two years, the United Kingdom will continue as a member state of the European Union, and EU rules will continue to have effect in the same way as at present.

In the longer term, however, there may be significant tax changes, in addition to the alterations in customs duties on trade with the European Union and third countries that are implicit in leaving the single market (should that be the end-result).

The European Union has an impact on UK tax rules in, broadly, four different ways.

Common EU rules

There are certain areas, such as VAT, where common EU-wide rules apply. In broad terms, if the United Kingdom wishes to introduce a new VAT exemption, or change the rules as to the place where cross-border supplies of goods and services are treated as made for VAT purposes, it cannot do so. Once it has left the European Union it will be free to do as it pleases.

That does not mean, however, that VAT will automatically disappear unless Parliament chooses to reintroduce it. The relevant EU rules take the form of Directives rather than directly applicable Regulations. This means that they have had to be implemented by means of UK legislation rather than applying automatically. Once the underlying Directives are no longer applicable because the United Kingdom is no longer within the European Union, the UK legislation will remain and will continue to apply unless or until the Government chooses to amend, replace or repeal it.

In practice there appears to be little realistic prospect that VAT will be repealed, as it is a major source of revenue for the Treasury. In addition, VAT is by no means solely an EU tax; an increasing number of countries in all parts of the world have introduced VAT (or a broadly equivalent goods and services tax) in recent years. More significant is the freedom that leaving the European Union will give the Government to introduce different VAT rates for different purposes (including rates above or below the current EU minimum) and to exempt or zero-rate further items.

A further area where common rules apply is the EU's Parent-Subsidiary Directive, under which dividends from a company in one Member State to certain related companies in another Member State must be paid free of any withholding tax. Once the United Kingdom is no longer in the European Union, the Directive will cease to apply vis à vis the United Kingdom, so dividends received by a UK company from other Member States may be subject to withholding tax, depending on the terms of the double tax treaty between the United Kingdom and the state concerned, unless the United Kingdom negotiates to join the European Economic Area or concludes a special bilateral agreement, such as Switzerland has. The United Kingdom does not itself charge withholding tax on dividends, so in this respect there will be no change as regards outbound dividends from the United Kingdom. Somewhat similar considerations apply to payments under the EU Interest and Royalties Directive.

State Aid

The second area where EU rules affect UK tax relates to State Aid, where subsidies to a particular industry from the Government of a Member State are prohibited without the permission of the European Commission. The Commission takes the view that making a tax relief available to a particular industry is the equivalent of subsidising it from public funds. The result is that many UK tax reliefs are announced by the Government 'subject to approval from the European Commission'. Others, presumably, are never announced at all, because the Government knows that approval will not be forthcoming. In future the United Kingdom will be able to give whatever tax reliefs it wishes, unless it joins the European Economic Area (to which Norway, Iceland and Liechtenstein belong), in which case it will still be bound by State Aid rules. Some of the reliefs currently affected by these rules are those for the Enterprise Investment Scheme, Venture Capital Trusts, research and development expenditure, the 'patent box' and the tonnage-tax system for shipping companies.

Freedom of establishment and free movement of capital

The third area relates to the four 'fundamental freedoms' enshrined in the Treaty on the Functioning of the European Union (TFEU), particularly 'freedom of establishment' and the 'free movement of capital'. The European Court of Justice has been active in enforcing changes (where necessary) to Member States' tax rules based on these freedoms, either in cases brought against states by the Commission or in interpreting national rules in disputes between tax authorities and taxpayers. In broad terms, the requirement is that the law of a Member State should not treat its own nationals or enterprises more favourably than those of other Member States in comparable circumstances. Perhaps the most notable example, for the United Kingdom, was a decision of the Court that the United Kingdom must give corporation-tax relief to a UK company for certain losses incurred by subsidiaries established in other EU Member States (as decided in the *Marks & Spencer* case).

No doubt the United Kingdom will eventually wish to change its rules in some of these cases, where it will no longer have any obligation or (possibly) inclination to favour enterprises of EU states over those established elsewhere in the world, or to grant UK tax reliefs that were never intended to apply in a cross-border context. Nevertheless, few of these are areas where urgent action may be expected.

EU plans for the future

Fourthly, there are areas where the UK tax system would have been affected in the course of time by the move to 'ever closer union'; for example, the proposal for a Common Consolidated Corporate Tax Base, under which companies' taxable profits would have been calculated in a uniform way across the EU. Clearly, such proposals will have no further impact on the United Kingdom, unless it chooses to mirror them.

Conclusion

The 'Brexit' decision will have no immediate impact on the UK tax system. Even when the formalities of withdrawal from the European Union are completed, this will not be the signal for immediate major changes. Rather, the United Kingdom's new status will give the tax system the freedom to develop over time, for good or ill, without some of the constraints that currently apply to it.

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Eclipse 35 scheme participants lose final battle

Participants in the Eclipse 35 film-partnership scheme, which purported to create large tax losses from investment in two Disney films, have lost their final battle with the UK tax authority, HMRC, in the Supreme Court.

The scheme offered to make significant tax losses available to participants, who include several celebrities, which they could then offset against their taxable income to generate tax repayments by claiming the special tax relief for investing in film. The investors invested in a partnership that acquired and then immediately sub-licensed rights over the two films. This purported to generate tax losses several times greater than the amount of each partner's investment.

In order for the scheme to succeed, the partnership had to be regarded as carrying on a trade. However, at each stage of the legal battle between HMRC and the partnership, the courts have upheld HMRC's argument that the partnership was not carrying on a trade. The UK Supreme Court has now concluded that battle by refusing the participants leave to appeal against the 2015 judgment of the Court of Appeal in the case.
There are many other schemes of a similar nature in which litigation is pending or under way.

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Investor's relief

The Finance Bill currently being considered in Parliament contains a new tax relief. Called investors' relief, the new measure extends the lower 10% rate of capital gains tax to individuals making long-term investments in shares in unquoted companies, without the need for the investor to be involved in the business and without a minimum shareholding requirement. Both these conditions must be met in order for investors to qualify for the existing entrepreneurs' relief.

For investors' relief, there will be a lifetime allowance of GBP 10 million of qualifying gains. There are five main conditions which will need to be met in order for this allowance to be available:

- the company must be an unlisted trading company or an unlisted holding company of a trading group (shares traded on the Alternative Investment Market – AIM – will also qualify)
- the investor must not be an employee of the company (subject to certain exemptions for unremunerated directors and some individuals who become employees more than 180 days after their investment)
- the investment must be in newly issued ordinary shares
- the investment must be made after 16 March 2016 and
- the shares must have been held for at least three years after 5 April 2016 and have been held continuously for the three years before the disposal.

Therefore, the earliest date on which shares qualifying for investors' relief could be sold would be 6 April 2019.

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Review of tax treaty passport scheme

The UK Government has issued a consultation document on the future of the Double-Tax Treaty Passport (DTTP) Scheme, under which the administrative requirements that foreign lenders must meet in order to have interest payments to them made at reduced or zero rates of withholding tax under an applicable tax treaty are simplified. Where foreign lenders are 'passported' under the scheme, their status need be checked only once every five years for all applicable loans.

The consultation document asks whether the DTTP scheme should be continued and, if so, whether its scope should be extended to include borrowers who are UK partnerships (currently, only corporate borrowers are included) and lenders who are foreign partnerships, sovereign investors and foreign pension funds (currently only foreign companies qualify).

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Partnerships to be subject to CbC reporting

Following further guidance from the OECD, the United Kingdom has confirmed that partnerships will be included in the entities with revenue of EUR 750 million or more required to file country-by-country reports, with effect for accounting periods beginning after 31 December 2015.

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Finance Act held up for summer recess

The Finance Act, which puts into law the Government's tax proposals as outlined in the Budget speech and earlier and subsequent pronouncements, and is usually given Royal Assent (passed into law) in mid- to late July, will not now be enacted until at least mid-September, after Parliament has returned from the summer recess. This delay results principally from the referendum campaign. It is not known whether the new Chancellor of the Exchequer (Philip Hammond) will be tabling new measures.

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Currency table

For ease of comparison, we reproduce below exchange rates against the euro and the US dollar of the various currencies mentioned in this newsletter. The rates are quoted as at 15 August 2016, and are for illustrative purposes only.

Currency	Equivalent in euros (EUR)	Equivalent in US dollars (USD)
Euro (EUR)	1.0000	1.1178
Pound sterling (GBP)	1.1536	1.2892
Swedisk krona (SEK)	0.1058	0.1183

Up-to-the-minute exchange rates can be obtained from a variety of free internet sources (e.g. http://www.oanda.com/currency/converter).

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