EUROPEAN TAX FLASH

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OECD issues four BEPS discussion drafts

OECD experts have been very busy lately, and have issued no less than four discussion drafts under the BEPS (Base Erosion and Profit Shifting) initiative and Action Plan within the last two weeks.

In chronological order:

A discussion draft on Action 6: *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances*, aimed at measures to counteract treaty-shopping, was published on 14 March. It contains proposals in three areas:

- Model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in 'inappropriate circumstances'
- Clarifying that tax treaties are not intended to be used to generate double non-taxation and
- Identifying the tax-policy considerations that countries should generally consider before deciding to enter into a tax treaty with another country

Comments on the discussion draft must be sent **no later than 9 April**. You may find the draft and the accompanying press release at: http://www.oecd.org/tax/discussion-draft-action-6-prevent-treaty-abuse.htm.

On 19 March, two discussion drafts were published under Action 2: *Neutralise the Effects of Hybrid Mismatch Arrangements*. These are aimed at counteracting the use of hybrid entities and instruments to generate double non-taxation, double deductions or long-term deferment of tax liabilities. One of the drafts contains recommendations for domestic laws in this area and the other at treaty issues.

Comments on these drafts must be made **no later than 2 May**. The drafts and the press release may be found at: http://www.oecd.org/tax/discussion-drafts-action-2-hybrid-mismatch-arrangements.htm.

Then on 24 March, the OECD published a discussion draft under Action 1: *Tax Challenges of the Digital Economy*. Comments on this draft, available from: http://www.oecd.org/tax/discussion-draft-action-1-tax-challenges-digital-economy.htm are due **no later than 14 April**.

Slightly more details on the contents of these discussion drafts will appear in the next issue of *European Tax Brief,* which will be published in April.

EU agrees automatic information exchange on Savings Directive

After six years of negotiation, the European Union has finally agreed and adopted a Directive that extends the scope of the Savings Tax Directive (Council Directive 2003/48/EC of 3 June 2003) and provides for automatic exchange of information between the tax authorities of the Member States. Agreement was reached after Austria and Luxembourg finally dropped their opposition to automatic information exchange.

Under the Savings Tax Directive in its present form, the tax authorities of a Member State are required to report all interest payments made by paying agents established in their territories to individuals resident in other Member States to the tax authorities of the state of residence. The Directive covers interest from most kinds of debt-claim, including most collective investment undertakings (UCITS, unit trusts etc). However, instead of exchanging information, tax authorities may instead opt to levy a withholding tax (originally 15% and now 35%) on the payments; three-quarters of this withholding tax is subsequently transferred to the state of residence. Only Austria and Luxembourg still levy the withholding tax because they did not wish to exchange information automatically.

The amendments now agreed extend the scope of the Directive to cover intermediate savings products channelling interest payments through intermediate tax-exempted structures and do away with the withholding-tax option.

The European Union has agreements with Andorra, Liechtenstein, Monaco, San Marino and Switzerland, which mirror the Savings Directive. Negotiations are already under way with those countries to extend their agreements accordingly.

The amending Directive has not yet been published in the Official Journal.

Further information on either the OECD discussion drafts or the Savings Directive changes can be obtained from the European Tax Coordinator, Zigurds Kronbergs. e-mail: zigurds.kronbergs@moorestephens-europe.com