



CFE EVENT

Save the date: CFE PAC Conference on “Amnesty – Privilege – Disclosure: Managing critical issues in client relations” on 7 December 2012 in London

The 5th CFE Conference on Tax Advisers’ Professional Affairs will take place in the morning of Friday 7 December 2012 in London. The conference seeks to discuss the phenomenon that amnesty, legal privilege and money laundering no longer are of core relevance solely for tax advisers who represent clients in criminal proceedings. Government, OECD and EU initiatives have been and are extending the fight against tax fraud and evasion with a particular focus on untaxed assets held offshore. Aggressive tax planning is being targeted as if it was illegal with real consequences for tax practitioners, especially those advising clients in cross-border tax planning.

It has been proposed that anti money laundering rules require that tax crime be categorised as a severe “predicate offence”, which will oblige tax advisers to take a closer look at their clients’ past tax dealings.

The professional landscape has changed and is changing. Henceforth all tax advisers must examine their modus operandi and ensure that disclosure and amnesty, legal privilege and anti money laundering are

core to each and every client assignment. Their very livelihoods are threatened if they don’t.

Expert speakers from the UK, Germany, Italy, Switzerland and the European Commission have been requested to address the repercussions of recent OECD and EU initiatives affecting:

- the professional activity of advisers in cross-border tax planning,
- offshore tax evasion disclosure facilities,
- bilateral tax agreements between Switzerland and a number of EU countries,
- the protection of communication of tax advisers with their clients and
- the consequences of amendments to the EU Anti Money Laundering Directive for tax advisers.

More information will soon be available on the CFE website.

READ MORE (*click to open*):

CFE website: [EN](#)

DIRECT TAX

Commission publishes responses to public consultation on double-non-taxation

On 5 July 2012, the European Commission has published a summary report and the responses received to its public consultation on double-non-taxation, held between 29 February and 30 May 2012. The number of 25 responses has been relatively low; moreover, many respondents have been unwilling or unable to provide the Commission with practical examples of double-non-taxation. Nevertheless, the Commission has identified three situations that have been considered least acceptable: the use of mismatches of hybrid entities and hybrid financial instruments and different applications of double tax conventions. The Commission currently considers the setting up of a Forum similar to the Joint Transfer Pricing Forum that would cover both double taxation and double-non-taxation which have often been described by commentators as two sides of the same coin. Member States expressed the wish that membership of such a Forum should extend beyond EU countries. The Commission is planning to issue a communication on good governance in the tax area in relation to tax havens and aggressive tax planning in late 2012.

READ MORE (*click to open*):

Summary report: [EN](#)

Responses from

- registered organisations: [EN](#)
- non-registered organisations: [EN](#)

Commission proposes quick reaction mechanism against VAT fraud

On 31 July 2012, the European Commission proposed a Quick Reaction Mechanism (QRM) that would enable Member States to respond more swiftly to VAT fraud. Under the QRM, a Member State faced with a serious case of sudden and massive VAT fraud would be able to implement certain emergency measures: the proposal provides that Member States would be able to apply, within one month, a reverse charge mechanism which makes the recipient rather than the supplier of the goods or services liable for VAT. This could improve their chances of effectively tackling complex fraud schemes, such as carousel fraud, and of reducing otherwise irreparable financial losses. In order to deal with possible new forms of fraud in the future, it is also foreseen that other anti-fraud measures could be authorised and established under the QRM.

Currently, if a Member State wishes to counteract VAT fraud through measures not provided for under EU VAT legislation, it must formally request a derogation which must be unanimously adopted in the Council as a legislative measure. This process may delay the necessary action to stop the fraud.

A derogation under the QRM would be valid for up to one year.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#)

Directive proposal COM(2012)428: [EN](#) [FR](#) [DE](#)

European Commission to set up new “VAT Forum”

Next to the to-be-established “VAT Expert Group” (see [CFE European Tax & Professional Law Report June 2012](#)), the European Commission decided on 3 July 2012 to set up a “VAT Forum”.

Different to the VAT Expert Group, the new Forum would focus on administrative issues in the practical implementation of the current VAT system (while the VAT Expert Group would also deal with the preparation of legislation and new policy measures), include a representative from each EU Member State, have a mandate for 3 years and would take on board 15 organisations representing business and tax practi-

tioners.

Application is open –also to non-EU-organisations and experts- until 24 August 2012. CFE will apply for membership as an organisation.

READ MORE (click to open):

Call for applications: [EN](#)

Commission publishes all VAT Committee Guidelines

On 4 July 2012, the Commission has made available the texts of all VAT Committee Guidelines since the creation of that Committee in 1977. The Committee was set up to promote the uniform application of the provisions of the VAT Directive. Because it is an advisory committee only and has not been attributed any legislative powers, the VAT Committee cannot take legally binding decisions. It can however give some guidance on the application of the Directive. The VAT Committee also examines questions concerning the application of EU VAT provisions raised by the Commission or a Member State. As a result of the discussion, the VAT Committee may agree guidelines on specific matters. An index linking the guidelines agreed with the relevant provisions of the VAT Directive and commenting upon them has also been made available.

READ MORE (click to open):

Guidelines from 1977-2012: [EN](#) [FR](#) [DE](#)

Index: [EN](#)

Draft Commentary on the International VAT Neutrality Guidelines

The OECD invites public comments on the draft Commentary on the International VAT Neutrality Guidelines. This draft Commentary provides guidance on the practical implementation of the six International VAT Neutrality Guidelines approved in July 2011. Public comments can be sent before 26 September 2012 to vat@oecd.org.

READ MORE (click to open):

Draft commentary: [EN](#)

INDIRECT TAX

Commission seeks to harmonise criminal sanctions for VAT fraud a.o.

On 11 July 2012, the European Commission proposed a Directive “on the fight against fraud to the Union’s financial interests by means of criminal law” to harmonise criminal sanctions for offences affecting the EU budget. Apart from obvious examples like fraud in public procurement, granting procedures, corruption or misappropriation, the European Commission also includes VAT fraud in the scope of the proposal as it sees a direct link between the collection of VAT revenue and the EU’s VAT own resources.

The main points of the proposal are the following:

- fraud (including VAT fraud) and “fraud-related offences” such as obstruction of public procurement and grant procedures (excluding bid-rigging), money laundering of proceeds from offences mentioned in the proposal, corruption and misappropriation would have to be sanctioned, provided that they affect the EU’s financial interest.
- Criminal penalties would have to be imposed for all offences not considered minor (meaning $\geq 10,000$ € in damages or advantages or any serious circumstances);
- Fraud, obstruction of public procurement or granting procedures or misappropriation involving an advantage or damage of $\geq 100,000$ € would be punishable by a minimum of 6 months and a maximum of 5 years imprisonment. For money laundering and corruption, the threshold for the same sanctions would be 30,000 €;
- A maximum penalty of at least 10 years imprisonment would apply where the offence was committed within a criminal organisation;
- No minimum sanctions are provided for legal persons.
- The prescription period would be at least 5 years from the time when the offence is committed;
- The proposal also deals with incitement, aiding and abetting, attempt and freezing and confiscation of proceeds.

READ MORE (click to open):

Directive proposal COM(2012)363:
[EN](#) (all EU languages)

Commission website and impact assessment: [EN](#)

VAT: Commission publishes recent informal expert group discussions with Member States

Informal Commission expert groups composed of representatives of national tax administrations provide the Commission a forum for consulting VAT experts from Member States on pre-legislative initiatives. Until recently, the Commission’s Directorate General for Taxation and Customs Union managed for this purpose Working Party No 1, a permanent group, and the Group on the Future of VAT, a temporary group established in the context of the Green Paper on the future of VAT. These groups have now been merged into a single permanent expert group, named „Group on the future of VAT“.

Meeting documents and reports of the Group on the Future of VAT “Taxation at destination – B2B supplies of goods; Identifying options and criteria for a qualitative assessment” and the Working Party N° 1 “Place of supply of telecommunications, broadcasting or electronic services to non-taxable persons applicable as of 1 January 2015” that have taken place 24 April 2012 and 2 July 2012 have now been made available.

READ MORE (click to open):

Meeting documents on Commission website:
[EN](#) [FR](#) [DE](#)

Commission publishes updated excise duty tables

The excise duty tables contain the rates and the receipts from excise duties on alcoholic beverages, manufactured tobacco and energy products and electricity. The update reflects the situation on 1 July 2012.

READ MORE (click to open):

Commission website: [EN](#)

Commission questions France and Luxembourg about reduced VAT rate on digital books

The European Commission has launched an infringement procedure against France and Luxembourg because the VAT rates they are applying to digital books

INDIRECT TAX

are potentially incompatible with EU law. Services supplied electronically like the downloading of digital books are not included in the list of possible reduced VAT rates. In its Communication of 6 December 2011 on the future of VAT (see [CFE European Tax Report December 2011](#)), the Commission launched a debate on the possibility of moving towards convergence of the VAT rates applicable to traditional and digital books. However, as the Commission stresses, this would require amending the VAT Directive. The rates for electronic books currently applied are 7% in France and 3% in Luxembourg, putting Luxembourgish and French providers of e-books at an advantage, as under current rules, the applicable VAT rate is the one of the country where the provider is located. The Commission has decided to send letters of formal notice to both Member States which is the first stage of an infringement procedure under the TFEU Treaty.

READ MORE (click to open):

Press release : [EN](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD releases reports on automatic cross-border tax information exchange and tax confidentiality

On 24 July 2012, the OECD has issued two new reports on automatic cross-border exchange of tax information and tax confidentiality. The report on automatic exchange describes this concept, how it works, where it stands and what challenges remain.

The report on confidentiality of information exchanged examines all aspects of ensuring that information exchanged for tax purposes is only used for the purposes allowed under the applicable exchange instrument, examining the legal framework to protect the tax confidentiality of information exchanged and the administrative policies and practices in place to protect confidentiality. The report sets out best practices related to confidentiality and provides practical guidance, including recommendations and a checklist on how to meet an adequate level of protection.

READ MORE (click to open):

News release: [EN](#)

Report on automatic exchange of information: [EN](#)

Report on protection of confidentiality of information exchanged: [EN](#)

OECD updates Model Tax Convention to enable information requests on groups

The OECD has updated Article 26 of its Model Tax Convention which sets out the international standard on exchange of information. The standard provides for information exchange on request, where the information is "foreseeably relevant" for the administration of the taxes of the requesting party, regardless of bank secrecy and a domestic tax interest. The update explicitly allows for group requests. This means that tax authorities are able to ask for information on a group of taxpayers, without naming them individually, as long as the request is not a 'fishing expedition'. This update represents a step forward towards more transparency, according to the OECD Centre for Tax Policy, facilitating exchange of tax information among law enforcement agencies to fight tax crimes and other criminal activities.

READ MORE (click to open):

News release: [EN](#) [FR](#)

New Commentary on Article 26: [EN](#)

Questions & Answers: [EN](#)

PROCEDURAL LAW

EP LIBE Committee in support of more rights for accused persons

On 10 July 2012, the European Parliament's LIBE (Civil Liberties, Justice and Home Affairs) Committee presented a draft report on the European Commission's Directive proposal COM(2011) 326 on the right of access to a lawyer in criminal proceedings, opposing the position of the Council which had proposed a

PROCEDURAL LAW

number of cutbacks to the accused person's rights (see [CFE European Law & Professional Affairs Report June 2012](#)).

STATE AID

Commission consults on de minimis regime

On 26 July 2012, the European Commission opened a public consultation on the so-called de minimis Regulation defining small-scale state aid measures that need not be notified to the European Commission. The current ceiling contained in Regulation (EC)1998/2006 is set at € 200,000 per undertaking for three fiscal years. This Regulation will expire at the end of 2013.

The review of the de minimis Regulation is an important element of the State Aid Modernisation Initiative (see [CFE European Tax & Professional Law Report June 2012](#)). Institutions, Member States and stakeholders are invited to comment until 18 October 2012.

READ MORE (click to open):

Commission website: [EN](#) [FR](#) [DE](#)

Questionnaire: [EN](#) [FR](#) [DE](#) [BG](#) [CS](#) [EL](#) [ES](#) [FI](#)
[IT](#) [LV](#) [MT](#) [NL](#) [PL](#) [PT](#) [RO](#) [SK](#) [SL](#)

Commission investigates into Maltese tonnage tax

On 25 July 2012, the European Commission has opened an in-depth investigation to examine whether the Maltese tonnage tax scheme for vessels is compatible with EU state aid rules. On the basis of available information, the Commission has concerns that the favourable tax treatment allowed by the EU Guidelines on state aid to maritime transport for the transport of passengers and freight by sea may have been extended to other categories of beneficiaries that are not suffering from the same handicaps and are therefore not entitled to lower taxes, namely fishing vessels, yachts, oil rigs, ship-owners without

any shipping activity of their own, i.e. pure lessors and financial institutions providing loans and guarantees to ship owners, operators, managers or administrators.

The opening of an in-depth inquiry gives interested parties the possibility to comment on the measures. It does not prejudice the outcome of the investigation.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#)

AUDIT

EP study sees flaws in Commission's Audit Directive and Regulation impact assessment

The responsible judicial affairs (JURI) committee in the European Parliament has commissioned a study on the European Commission's impact assessment accompanying its proposals for a revised Audit Directive and an Audit Regulation of November 2011 (see [CFE European Tax Report December 2011](#)). According to the study, the Commission's impact assessment shows weaknesses in methodology and conclusiveness: the causal link between concentration in the audit market, a distortion of competition and the economic crisis is not conclusive and the Commission's reasoning concerning mandatory rotation of auditors and the separation of audit and other services for public interest entities does not meet the proportionality test.

READ MORE (click to open):

Study: [EN](#)

PROFESSIONAL QUALIFICATIONS

Draft EP report on revision of Professional Qualifications Directive

On 16 July 2012, French Socialist MEP Bernadette Vergnaud from the responsible IMCO (Internal Market and Consumer Protection) Committee of the European Parliament issued her draft report on the review of the Professional Qualifications Directive, proposed by the European Commission in December 2011 (see [CFE European Tax & Professional Law Report December 2011](#)).

Among the contested parts of the proposal is the possibility of partial access to a regulated profession under certain conditions. Partial access is meant as a last resort where the difference between the qualification obtained in the home MS and the qualification required in the host MS is so large that it cannot be bridged by any compensation measures. Member States may refuse partial access for overriding reasons of general interest (consumer/client protection could be such a reason). The draft Vergnaud report states that Member States may refuse partial access for entire professions (and not only in individual cases).

A core element of the Commission's proposal is the introduction of professional cards for a number of professions which would enable facilitated and quicker procedures for professionals willing to practice cross-border. The card would have to be issued by the home Member State of the professional and in case of permanent activity in another Member State, to be validated by the competent authority in that Member State. The draft Vergnaud report proposes extensions of the proposed time periods for the issuing and the validation of professional cards and to limit their validity to one year (instead of two years, as proposed by the Commission). In case of permanent activity, the Commission proposal provides for tacit authorisation if the host country's competent authority fails to validate a professional card within the given time period. The draft Vergnaud report would maintain tacit authorisation but give the competent authority the possibility to revoke such authorisation at a later stage.

Another important change introduced in the Vergnaud report is to allow Member States that regulate a profession to require professional indemnity insurance from temporary cross-border service providers. This would be a change to the current system according to which the service provider can only be required to inform about any insurance cover but not to obtain insurance cover.

The Commission proposal extends the scope of the

Directive to remunerated traineeships. The Vergnaud report deletes the remuneration requirement and emphasises that the traineeship has to be part of the professional education.

Further amendments include better consultation of relevant stakeholders by the Commission when adopting delegated acts.

According to European Parliament information, the translations of the draft report should be available towards end of August/early September.

[READ MORE \(click to open\):](#)

Draft report: [FR](#)

Commission proposal of 19 December 2011: [EN](#) (all EU languages)

Current PQ Directive (consolidated version of 2011): [EN](#) [FR](#) [DE](#)

PROFESSIONAL LAW

ECHR rules on seizure of documents and electronic data in the office of an accused lawyer

On 3 July 2012, the European Court of Human Rights (ECHR) decided in case 30457/06 on the proportionality of a seizure undertaken by Austrian authorities in the office of an Austrian lawyer suspected of theft, embezzlement and fraud to the damage of two of his clients, charges of which he was ultimately acquitted. Police conducted a search and seizure of documents and all electronic data in his office. The lawyer relied on Article 8 of the European Convention of Human Rights which contains also the right of respect of correspondence, claiming that the seizure should have been limited to matters concerning the two clients concerned. This was confirmed by the ECHR which found that the seizure of all electronic data was disproportionate.

[READ MORE \(click to open\):](#)

Judgment: [EN](#)

IMPRESSUM

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