



CFE EVENT

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 will 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.

READ MORE (*click to open*):

CFE website: [EN](#)

DIRECT TAX

European Commission publishes report on taxation of cross-border dividend payments within EU

On 14 September 2012, the European Commission published a report on the taxation of cross-border dividend payments within the EU, produced by Copenhagen Economics. Starting point is that the present structure of taxation of cross-border portfolio and individuals’ equity investments creates distortions to investments: A higher overall taxation of dividends from non-domestic than domestic equity investment requires a higher compensating pre-tax return. This reduces the incentive to invest in other EU Member States and conflicts with the objective of a common internal market for capital. Procedures to relieve such over-taxation (e.g. the necessity to claim refund where relief at source is not available) create additional effort. The report assesses the economic and legal impacts of six options for action identified by the Commission.

READ MORE (*click to open*):

Report: [EN](#)

Methodology appendix: [EN](#)

Cross-border loss relief: Commission refers UK to Court

On 27 September 2012, the European Commission decided to refer the UK to the EU Court of Justice for its tax legislation on cross-border loss relief. The Commission considers that the UK has failed to properly implement the ECJ’s Marks & Spencer ruling (Case C-446/03) on this matter.

READ MORE (click to open):

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

Inheritance Tax: Commission refers Germany to the ECJ

The European Commission decided on 27 September 2012 to refer Germany to the EU Court of Justice because of its legislation on inheritance and gift tax allowances. Under German law, there is a higher tax exemption for inherited German property if the testator or the heir reside in Germany, than if they are both living abroad. As a result, non-residents are taxed much higher on inherited assets located in Germany than German residents. Such a provision could dissuade citizens living abroad from investing in property located in Germany. The Commission is of the opinion that this provision is discriminatory and constitutes an unjustified restriction on the free movement of capital.

READ MORE (click to open):

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

Hidden reserves: Commission refers Germany to Court

On 27 September 2012, the European Commission decided to refer Germany to the EU Court of Justice over its discriminatory tax rules on the reinvestment of hidden reserves. Under German legislation, hidden reserves can only be transferred tax-free into a reinvestment if the newly purchased assets belong to a permanent establishment in Germany. In practice, this means that a taxpayer wishing to sell certain fixed assets in order to establish himself in another EU Member State or to expand his business activities abroad will be at a disadvantage. This unequal treatment can discourage cross-border investments and is seen contrary to EU rules for its discriminatory nature.

READ MORE (click to open):

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

Commission requests Austria to cease discriminatory treatment of foreign non-profit institutions

The Commission has formally requested Austria to amend its tax legislation related to the treatment of gifts to non-profit organisations. Austrian law allows gifts to certain non-profit institutions established in Austria to be treated as „special expenses“, whereas this benefit is not allowed for gifts to comparable foreign institutions. The result is a higher tax burden on those who make gifts to non-Austrian institutions. This constitutes a restriction on the free movement of capital for which the Commission sees no justification. The Commission’s request takes the form of a reasoned opinion (the second stage of an infringement procedure). In the absence of a satisfactory response within two months, the Commission may refer Austria to the EU Court of Justice.

READ MORE (click to open):

Press release: [EN](#) (all EU languages)

Commission requests Greece to amend vehicle registration tax

The European Commission has formally requested Greece to change registration tax rules for company vehicles provided to Greek residents by employers not established in Greece.

Under Greek law, in this case, registration tax must be paid for that vehicle after six months. The Commission considers that Greece is disregarding ECJ case-law on this matter. The request takes the form of a reasoned opinion (second step of EU infringement proceedings). If Greece does not comply with the request within two months, the Commission may decide to refer Greece to the EU’s Court of Justice.

READ MORE (click to open):

Press release: [EN](#) (all EU languages)

Commission requests Spain to change real estate tax regime

The Commission has requested that Spain amend its tax provisions for certain real estate sales. Under Spanish law, capital gains from the sale of a permanent residence are exempt from tax if the proceeds are used to acquire another permanent residence. However, this provision only applies to Spanish resi-

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dents, thereby discriminating against non-residents. The provisions are considered incompatible with the fundamental freedoms set out in the Treaties. The request takes the form of a reasoned opinion (second step of EU infringement proceedings). If Spain does not comply with the request within two months, the Commission may decide to refer the case to the EU Court of Justice.

READ MORE (click to open):

Press release: [EN](#) (all EU languages)

Commission adopts communication on Joint Transfer Pricing Forum

On 19 September 2012, the European Commission adopted a Communication on the work of the EU Joint Transfer Pricing Forum in the period July 2010 to June 2012 and the related proposals:

- Report on Small and Medium Enterprises and Transfer Pricing and
- Report on Cost Contribution Arrangements on services not creating Intangible Property.

The EU Joint Transfer Pricing Forum (JTPF) is an expert group consisting of representatives from the private sector and Member States set up by the Commission to find pragmatic solutions to problems arising from the application of the arm's length principle in transfer pricing, in particular within the EU. The current mandate of the JTPF runs from 2011 until March 2015.

READ MORE (click to open):

Communication on Joint Transfer Pricing Forum: [EN](#) (all EU languages)

Commission consults on tax obstacles to cross-border venture capital investment

On 3 August 2012, the European Commission launched a public consultation to collect factual examples of direct tax problems that arise when venture capital is invested across borders. Due to mismat-

ches between the tax systems of the EU's 27 Member States, venture capital funds can face problems of double taxation as well as legal and administrative uncertainty when they invest across borders. These problems could hinder the full development of the venture capital market in Europe and therefore compromise the provision of financing to the EU's most innovative small and medium-sized enterprises (SMEs).

The aim of the public consultation is to find concrete examples of direct tax problems and to assess the impact of these problems in terms of additional costs to investors and SMEs in the EU. The Commission also seeks suggestions from respondents on feasible solutions to address any such problems. On this basis, the Commission will be able to decide if there is a need for EU-level solutions to remedy the problems and develop the most appropriate policy response by 2013. Comments may be submitted until 5 November 2012.

READ MORE (click to open):

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

Consultation website: [EN](#)

Consultation paper: [EN](#) [FR](#) [DE](#)

ECJ: Losses of domestic PEs of foreign group members may be included in the results of the domestic tax group

On 6 September 2012, the ECJ decided in case C-18/11, Philips Electronics UK, that also income of domestic permanent establishments of foreign group members must be included in the results of the domestic tax group. The decision follows the ECJ case law in Papillon (C-418/07) according to which it must be allowed to include domestic subsidiaries of foreign group members in domestic tax groups.

Philips Electronics UK Ltd. which is part of the Dutch Philips group intended to balance its earnings with the losses of the British permanent establishment of another Dutch company of the group, benefiting from the UK group taxation regime. However, under UK rules, such attribution of losses is not possible because the other company is based in the Netherlands and not in the UK.

The ECJ held that the UK restriction infringes the freedom of establishment and could not be justified with the need to preserve a balanced allocation of

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taxation rights between Member States and to avoid multiple use of losses in several Member States, being an inappropriate means to achieve these goals.

READ MORE (click to open):

Judgment and Advocate-General opinion: [EN](#) (all EU languages)

CFE comments on two OECD discussion drafts on intangibles and safe harbours in Transfer Pricing Guidelines

On 28 September 2012, the CFE has commented on two OECD discussion drafts on transfer pricing, namely on the special considerations for intangibles and on the safe harbours section of the OECD Transfer Pricing Guidelines (see also [CFE European Tax & Professional Law Report June 2012](#)). OECD has published the comments received before that date on its website, as well as the comments received on a separate consultation on timing issues in transfer pricing.

READ MORE (click to open):

Intangibles in TP Guidelines, comments received: [EN](#)

Safe harbours in TP Guidelines, comments received: [EN](#)

Timing issues in TP, comments received: [EN](#)

CFE opinion statement on the Safe Harbours section in the OECD Transfer Pricing Guidelines: [EN](#)

CFE opinion statement on the special considerations for intangibles in the OECD Transfer Pricing Guidelines: [EN](#)

INDIRECT TAX

France and Germany lead request for FTT through enhanced cooperation of 11 Member States

On 28 September 2012, France and Germany sent a joint letter to Tax and Customs Commissioner Algirdas Šemeta asking the Commission to make a legislative proposal for a Financial Transactions Tax (FTT) by way of enhanced cooperation. The introduction of a FTT in a limited number of Member States would require a qualified majority of all Member States and minimum of at least nine countries participating. Those would have to vote unanimously on an FTT proposal. The Franco-German letter seeks to maintain the scope of the Commission's original proposal from September 2011 proposing a tax of 0.1% on trades in shares and bonds, and a 0.01% tax on derivatives trading. Countries that have joined France and Germany until 9 October 2012 are Austria, Belgium, Estonia, Greece, Italy, Portugal, Slovakia, Slovenia and Spain.

Commission requests that Germany amends its rules on VAT refunds for non-EU operators

The European Commission has requested that Germany amends its legislation which requires that VAT refund applications submitted by non-EU operators be personally signed by the applicant. Such requirement does not exist in the relevant EU legislation and increases the difficulty of non-EU operators to obtain a VAT refund. The Commission considers that Germany's objective to combat tax evasion and to ensure a proper refund procedure could be achieved through other means, such as the appointment of a tax representative. Although not affecting EU businesses, the German provision would be against EU principles such as proportionality. The request takes the form of a reasoned opinion (the second stage of an infringement procedure). If the legislation is not brought into compliance with EU law within two months, the Commission may refer the matter to the EU Court of Justice.

READ MORE (click to open):

Press release: [EN](#) (all EU languages)

INDIRECT TAX

CFE and several member organisations and delegates appointed members of Commission VAT Expert Group and VAT Forum

On 20 September 2012, the European Commission appointed the members of the VAT Expert Group and the VAT Forum, two newly-established advisory body (see CFE European Tax & Professional Law Report [June](#) and [July](#) 2012 assisting the European Commission in its VAT work.

The task of the VAT Expert Group will be to advise the Commission on the preparation of legislative acts and other VAT policy initiatives and to provide insight into the practical implementation of EU VAT policy. Among the 22 organisations and 18 individuals appointed are the CFE itself, represented by Petra Pospišilova (CZ) and alternate Jeremy Woolf (UK), four CFE member organisations (Association of Tax Professionals of Croatia, UK Chartered Institute of Taxation, Irish Tax Institute and the Slovak Chamber of Tax Advisers) and four CFE Fiscal Committee members (Carlos Gomez (Spain), Tomasz Michalik (Poland), Andrea Parolini (Italy) and Gottfried Schellmann (Austria)). A first meeting has been scheduled for 24 October 2012. The mandate of the VAT Expert Group is valid for two years.

While the VAT Expert Group focuses more on the future of VAT, the VAT Forum is designed as an informal discussion platform between business and national tax authorities to manage the current VAT system more efficiently, e.g. by promoting good practices in the use of IT. CFE will be one of 15 participating organisations.

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

VAT Expert Group: Commission decision: [EN](#)

ECJ decides on conditions for VAT exemption if a company's business partner fails to transport goods to another Member State

On 6 September 2012, the ECJ delivered its judgment in case C-273/11 Mecsek-Gabona stating that a company which has sold goods for transport to another Member State may be refused the VAT exemption if it has failed to prove that the supply is an

intra-Community transaction; on the other hand, if the company has produced the requisite proof and acted in good faith, it cannot be refused the VAT exemption on the ground that the purchaser did not transport the goods to a destination outside the Member State of dispatch.

Under the VAT Directive, the sale of goods dispatched or transported to a destination in another Member State, for a purchaser which is itself liable for VAT in a Member State other than that in which dispatch or transport of the goods began, is exempt from VAT in the former Member State. In such cases, it is the purchaser which is liable for VAT in the country of destination.

In the case at issue, a Hungarian company had sold to a company in Italy – which, at the time, had a VAT identification number – goods which, under the contract of sale, the purchaser had to transport to another Member State. The goods were handed over to the purchaser at the seller's premises in Hungary and, from a postal address in Italy, the Italian purchasing company returned to the vendor a number of CMRs proving that the goods had been transported to a destination outside Hungary.

Accordingly, Mecsek-Gabona did not invoice the VAT to the purchaser and did not pay it to the Hungarian tax authority.

However, the purchasing company could not be found and had never paid VAT in Italy. Consequently, the Italian company's VAT identification number was removed from the register with retroactive effect.

The Hungarian tax authority ordered Mecsek-Gabona to pay the VAT in respect of that transaction and imposed on it a fine and a late-payment penalty. The referring Hungarian Court asked the ECJ to determine what constitutes satisfactory evidence that a tax-exempt supply of goods has taken place. It also asked the ECJ to define the extent to which the vendor, if it does not arrange the transport itself, is answerable for the conduct of the purchaser if it has not been established that the goods sold have arrived in the Member State of destination.

In its judgment, the ECJ finds that it is for the Member States to determine what constitutes satisfactory evidence, respecting legal certainty and proportionality. However, a Member State may not require the taxable person to provide conclusive proof that the goods have physically left its territory.

The Court points out that in situations like the one at issue, the evidence that the vendor can submit to the tax authorities depends essentially on information that it receives for those purposes from the purchaser. Accordingly, once the vendor has fulfilled its obligations in relation to evidence, it cannot be held liable for the VAT in the Member State of supp-

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ly where the contractual obligation to dispatch or to transport the goods out of that Member State has not been met by the purchaser. In such circumstances, it is the purchaser which must be held liable for the VAT in the Member State of supply. However, the vendor must be in good faith, meaning he must have taken every step which could reasonably be asked of it to prevent fraud. Mecsek-Gabona could rely on the Italian VAT register at the time the transaction took place as it is the Member States' responsibility to ensure the accuracy of their registers.

READ MORE *(click to open)*:

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [CS](#) [EL](#) [IT](#) [HU](#) [SK](#)

Judgment: [EN](#) (all EU languages)

ECJ rules on interest to be paid for excess VAT

Already on 19 July 2012, the ECJ decided in the case C-591/10, Littlewoods, concerning the UK, that a taxpayer may not only claim the refund of excess VAT paid but also interest, as he suffers a cash-flow disadvantage. The Court specifies that it is for national law to determine, in compliance with the principles of effectiveness and equivalence, whether the principal sum must bear 'simple interest', 'compound interest' or another type of interest. Although this does not oblige the Member State to adopt the most advantageous regime for interests the conditions may not be less advantageous than for similar claims based on national law and may not practically impede the claim.

READ MORE *(click to open)*:

Judgment and Advocate-General opinion: [EN](#) (all EU languages)

ACCOUNTING

EP JURI Committee votes on annual accounts and increased transparency through reporting of payments to governments

On 18 September 2012, the European Parliament's JURI (Legal Affairs) Committee has adopted the reports of Arlene McCarthy (S&D, UK) and Klaus-Heiner Lehne (EPP, Germany) on the revision of the EU Accounting Directive ("4th Company Law Directive") 77/660/EEC and the Transparency Directive 2004/109/EC. The revisions proposed by the European Commission on 25 October 2011 seek to simplify annual accounts especially for SMEs and introduce new reporting requirements for large companies active in the extractive industry, aimed at increasing transparency of their large payments to governments in resource-rich countries.

The JURI extended the reporting obligation on businesses in the banking, construction and telecommunications industry, introducing a reporting threshold € 80,000, favouring reporting by project, not only by country. An exemption of reporting of payments to government where this is prohibited by local national law (dubbed by some "dictator clause") was deleted.

READ MORE *(click to open)*:

JURI report available from the [CFE Office](#)

Accounting Directive Proposal: [EN](#) (all EU languages)

Transparency Directive proposal: [EN](#) (all EU languages)

TAX AND PROFESSIONAL AFFAIRS

National developments in taxes and professional affairs: CFE publishes reports from 13 countries

The CFE has published National Reports on the developments in professional affairs in six countries in the last 12 months. Issues addressed include, a.o., the deletion of certain reserved activities of tax advisers in Poland, the introduction of a limited liabi-

TAX AND PROFESSIONAL AFFAIRS

lity partnership as a new legal form for tax firms in Germany, a mandatory lobby register with detailed disclosure requirements in Ireland, threats to professional confidentiality rules as a result of an OECD transparency and exchange of tax information report in the Czech Republic, changes in anti money laundering rules in Ireland, the Netherlands and the UK and the introduction of a performance review of tax practitioners by the UK tax administration as part of their "tax agent strategy".

The National Reports in tax matters cover the period from April to September 2012 and include 13 countries: Belgium, Czech Republic, France, Germany, Ireland, Italy, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and the UK. The reports deal with both direct and indirect tax matters.

READ MORE *(click to open)*:

Fiscal Committee National Reports: [EN](#)

Professional Affairs Committee National Reports: [EN](#)

OTHER EU POLICY

Wanted : the 10 most burdensome legislative acts for SMEs

The European Commission has launched a public consultation enquiring into EU legislation considered particularly burdensome for SMEs. Examples given by the Commission include a.o. VAT, excise duties and other indirect and direct taxes, provision of services across borders, recognition of professional qualifications, customs formalities, classifications and tariffs, social security, company law and data protection. Responses can be sent until 21 December 2012.

READ MORE *(click to open)*:

Consultation website : [EN](#) (all EU languages)

Questionnaire : [EN](#) (all EU languages)

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

PROFESSIONAL QUALIFICATIONS

CFE comments on Professional Qualifications Directive revision

On 3 October 2012, the CFE has commented on the proposal for a modernised Professional Qualifications Directive of 19 December 2011 and on the amendment proposals drafted by MEP Bernadette Vergnaud (S&D, France) from the EP's IMCO (Internal Market and Consumer Protection) Committee. The CFE comments focus on the possibility of granting partial access to a regulated profession, the procedure of introducing "European Professional Cards" designed to facilitate cross-border mobility of certain professions, a tacit authorisation regime where such a card system is in place and a professional indemnity insurance requirement for temporary cross-border services. The vote in the IMCO is currently scheduled for 28 November 2012, the plenary vote for 5 February 2013.

READ MORE *(click to open)*:

EMPL Committee amendments: [EN](#) (for [other languages](#) see menu)

Draft Vergnaud report: [EN](#) (all EU languages)

CFE Opinion Statement: [EN](#)

CROSS-BORDER SERVICES

Commission requests that Luxembourg lifts its language requirement for lawyers

On 27 September 2012, the European Commission has requested Luxembourg to allow lawyers to establish themselves freely in Luxembourg. Its current legislation requires that all lawyers speak French, German and Luxembourgish. The Commission considers that there are less restrictive and more effective means of safeguarding the efficiency of the legal system, the protection of clients and the country's linguistic heritage. For example, the Luxembourg Bar already maintains a publicly available list of lawyers which refers to their specialisations and the languages in which they practice. Today's request takes the form of a reasoned opinion under EU infringement procedures. Luxembourg now has two months

CROSS-BORDER SERVICES

to notify the Commission of measures taken to respect its obligations under EU law on establishment of lawyers. Otherwise, the Commission may decide to refer Luxembourg to the EU Court of Justice.

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

Press release: [EN](#) (all EU languages)

PROFESSIONAL LAW

EU Standardisation Regulation adopted

The European Parliament on 11 September and the EU (Competitiveness) Council on 4 October 2012 have adopted a new EU Regulation on Standardisation, allowing for the development of voluntary services standards by European standardisation bodies. CFE commented in January 2012 on the proposal from the European Commission, arguing that standardisation should not cover the content of the highly individualised intellectual services of liberal professions such as tax advisers and that a consultation of all relevant stakeholders prior to the development of standards in a certain sector should become mandatory. While the first plea was not followed by the European legislator, the plea demand for mandatory stakeholder involvement in the drawing up of the Commission's standardisation work programme and within standardisation bodies was successful.

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

Press release: [EN](#)

AUDIT

MEP presents mitigated revision of EU audit rules

On 4 and 5 September 2012, MEP Sajjad Karim

(ECR, UK) from the Legal Affairs (JURI) Committee presented his draft reports on the contentious proposals for a revised Audit Directive (applying to all audits) and a new Audit Regulation (applying to audits of public interest entities), originally presented by the European Commission in November 2011.

For audits of public interest entities, the Commission had proposed a mandatory rotation of audit firms after six years (exceptionally 8 years) or, in case of audits carried out jointly by two firms, 9 years (exceptionally 12 years), followed by a 4-year waiting period. In contrast, MEP Karim's report would allow a 25-year period with the obligation to render a report to the public authority on possible threats to auditor's independence every 7 years.

Another important point is the deemed incompatibility of audit and tax consulting services due to conflict of interest (which reads differently when comparing the different language versions of the proposal). The Karim report proposes the deletion of the relevant provisions from the Regulation.

The proposal on the revised Audit Directive, although much less debated in public, contains a number of important issues for tax advisers in some countries. The Commission seeks to extend the Directive on all audits in the EU, including audits which are not required by EU law but by national law and even voluntary audits. In countries where tax advisers are allowed to carry out audits not required by EU law, they would lose this competence.

Moreover, the Directive proposal seeks to abolish restrictions of ownership of audit firms that exist in Member States (while the current Directive imposes such restrictions).

Finally, the Audit Directive proposal envisages a further shift of responsibilities from professional self-regulation to state oversight.

MEP Karim's amendment proposals remain silent on the first two issues and only propose slight changes to the latter.

The vote in the EP plenary is scheduled for late February 2013.

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

Audit Directive proposal COM(2011)778: [EN](#)
(all EU languages)

Audit Regulation proposal COM(2011)779: [EN](#)
(all EU languages)

IMPRESSUM

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