



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 on Friday 7 December 2012 in London. The half-day 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 Netherlands 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.

READ MORE (*click to open*):

CFE website: [EN](#)

DIRECT TAX

Report on effective levels of company taxation within the EU

On 23 October 2012, the European Commission published the report ‘Effective tax rates in an enlarged European Union’ by the German economic research institute ZEW. The 2420 page document extends the scope of the calculation of effective tax rates on effective levels of company taxation. The project includes a focus on the effects of tax reforms in the EU27 for the period 1998-2011 and their impact on the level of taxation for both domestic and cross-border investment.

READ MORE (*click to open*):

Report: [EN](#)

Commission refers UK to Court over the taxation of assets abroad

On 24 October 2012, the European Commission has decided to refer the United Kingdom to the EU Court of Justice for its regime concerning the taxation of transfers of assets abroad (as contained in the Income Tax Act 2007). UK legislation provides for a difference in treatment between domestic and cross-border transactions.

If a UK resident invests capital in a UK company, the company will be taxable on its income generated, but the investor will not be taxed until the company makes a distribution to him/her, for example by way of a dividend.

However, if a UK resident invests capital in a company in another Member State, the company is liable to be taxed in that Member State on the income it gene-

DIRECT TAX

rates. In this scenario the investor would be subject to UK income tax on that income, even though the income has not been distributed to him/her.

These rules pose a restriction of the freedom of establishment and the free movement of capital in the TFEU and the EEA Treaties for which the Commission sees no justification, believing that this restriction is disproportionate as it goes beyond what is reasonably necessary in order to prevent abuse or tax avoidance.

READ MORE (click to open):

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

Commission Taxation paper on the debt bias problem

“Debt bias” is created through the tax deductibility of interest payments in most corporate income tax systems coupled with no such measure for equity financing. This creates economic distortions by favouring borrowers over equity owners and gives an incentive to borrow, exacerbating leverage. The paper written by European Commission staff and published on 12 October 2012 discusses the consequences of debt bias and possible remedies.

READ MORE (click to open):

Taxation Paper 33: [EN](#)

EP names double taxation among top 20 single market concerns of EU citizens and businesses

The European Parliament, in a non-legislative resolution adopted on 25 October 2012, recalled the fact that EU citizens still do not benefit fully from the single market. The resolution calls on the Commission to present concrete actions and feasible proposals to tackle the top 20 concerns identified by citizens and businesses.

Among a broad range of issues addressed, the MEPs also named tax disadvantages faced by cross-border workers and double taxation, especially in inheritance tax. Concerning inheritance tax, the Parliament regrets that the Commission has only proposed

a (non-binding) recommendation on this issue (see [CFE European Tax & Professional Law Report December 2011](#)).

In the area of recognition of professional qualifications, the EP calls for the introduction of “European Professional Cards” with competent authorities communicating with each other through the IMI (Internal Market Information) System, as proposed by the Commission last December. Rapporteur was Portuguese EPP delegate Regina Bastos.

READ MORE (click to open):

EP resolution of 25 October 2012: [EN](#) (all EU languages available)

Press release: [EN](#) (other languages available)

OECD publishes comments received to transfer pricing discussion drafts

The OECD has published the full lists of comments received to its three transfer pricing –related discussion drafts, namely on timing issues, safe harbours and intangibles (see [CFE European Tax & Professional Law Report 6/2012](#)). CFE has commented on the latter two in September 2012.

READ MORE (click to open):

Timing issues:

- list of commentators: [EN](#)
- Comments received: [EN](#)

Intangibles:

- List of commentators: [EN](#)
- Comments received (>1000 pages): [EN](#)

Safe harbours:

- List of commentators: [EN](#)
- Comments received (>200 pages): [EN](#)

Tax treaty issues related to emissions permits and credits: OECD consults on discussion draft

On 19 October 2012, the OECD has opened a public consultation on its revised discussion draft on tax treaty issues related to emissions permits and credits. This analysis addresses the application of the provisions of the OECD Model Tax Convention to the

DIRECT TAX

cross-border trading of emissions permits. The work is a follow-up to the OECD discussion draft released in May 2011. Comments received on that discussion draft had suggested that its scope be expanded to cover tax treaty issues arising from the trading of Certified Emission Reduction credits and Emission Reduction Units as well as tax treaty issues arising from the issuance, as opposed to the trading, of emissions permits, CERs and ERUs. These comments have now been taken into account.

Comments can be sent until 15 January 2013.

READ MORE (click to open):

OECD news release: [EN](#) [FR](#)

Revised OECD discussion draft: [EN](#)

OECD Model Tax Convention: [EN](#)

“Permanent establishment” in the Model Tax Convention: OECD consults on revised discussion draft

On 19 October 2012, the OECD has invited public comments on revised discussion draft on the interpretation and application of Article 5 (permanent establishment) in the OECD Model Tax Convention. The work follows up on the input provided by stakeholders (a.o. the CFE) on a public consultation carried out one year ago. The next update to the OECD Model Tax Convention is currently scheduled for 2014. Interested parties are invited to send their comments, which should focus on the drafting of the recommendations rather than on their substance before 31 January 2013.

READ MORE (click to open):

OECD news release: [EN](#) [FR](#)

Revised OECD discussion draft: [EN](#)

OECD Model Tax Convention: [EN](#)

“Beneficial owner” in the Model Tax Convention: OECD consultation on revised proposals

On 19 October 2012, the OECD opened a public consultation on revised proposals concerning the meaning of “beneficial owner” in the OECD Model Tax Convention. A discussion draft on this issue had been published for comments in April 2011. In light of these comments, the OECD has made a number of changes to draft. Comments are invited before 15 December 2012 but should focus on drafting issues rather than on the substance of the proposals.

READ MORE (click to open):

OECD news release: [EN](#) [FR](#)

Revised OECD proposals: [EN](#)

OECD Model Tax Convention: [EN](#)

UN present transfer pricing manual for developing countries

The UN Committee of Experts on International Cooperation in Tax Matters has approved a Practical Transfer Pricing Manual for Developing Countries at its session on 15-19 October 2012. The work reflects the operation of Article 9 of the United Nations Model Convention, and the Arm's Length Principle embodied in it and is designed to take account of the realities for developing countries. The document is accompanied by a note for developing countries on ways to obtain technical assistance from various international organisation. Upon presentation of the manual, the UN held a brief public consultation on the document until 15 November 2012.

READ MORE (click to open):

UN practical transfer pricing manual for developing countries: [EN](#)

CFE publishes update to Transfer Pricing Survey

The CFE has updated its Survey on Transfer Pricing Documentation. The 2011/2012 update includes responses from 20 European countries to 36 transfer pricing related questions. Attached to the summary

DIRECT TAX

document is a compilation of transfer pricing case law from CFE member countries. The summary document displays the legal situation of 30 September 2011.

READ MORE (click to open):

CFE website: [EN](#)

INDIRECT TAX

Commission reports on VAT on on-board restaurants and catering

The VAT Directive 2006/112/EC provides that the Commission presents to the Council a report on the VAT treatment of goods and services, including restaurant and catering services, supplied to passengers on board of ships, aircraft, trains or buses. The report issued by the Commission on 22 October 2012 focuses not only on the place of taxation but also on exemptions currently applied in this sector. An expert study conducted by PWC for the Commission on this subject is published together with this report.

READ MORE (click to open):

Commission report: [EN](#)

Commission asks Council to clear the way for enhanced cooperation in FTT

On 23 October 2012, the European Commission has submitted to the Ecofin Council a proposal for a decision to authorise “enhanced cooperation” which would allow 11 EU Member States to introduce a Financial Transaction Tax, based on the Commission’s original proposal of 28 September 2011 (see [CFE European Tax Report 08/2011](#)), concluding that the legal conditions for enhanced cooperation are met. The 11 countries having requested the FTT are Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (with the Netherlands having indicated that they might be interested in participating under conditions). The FTT

will have to remain open to all other member states that may wish to join at a later stage under the same conditions.

The Council has to adopt the Commission’s proposal with qualified majority (for which at least 14 countries are needed) and the approval of the European Parliament (which is likely to be given). Finally, the participating Member States have to agree upon the Directive proposal unanimously.

READ MORE (click to open):

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

Proposal for a Council decision authorising enhanced cooperation: [EN](#)

“Assessing the economic impact of financial transactions taxes” in Quarterly European Commission Report on the Euro Area (p.31): [EN](#)

Commission consults about future of reduced VAT rates

Many experts contend that countries should seek to broaden their VAT bases as the VAT base is considered one of the less mobile tax bases, compared to corporate and personal income tax, while social objectives pursued through reduced VAT rates should be targeted through other state benefits. Moreover, some objectives pursued at the time of introduction of reduced rates are considered outdated and some reductions considered even harmful, e.g. where they benefit environmentally unfriendly products or services.

On 8 October 2012, the European Commission opened a public consultation on certain reduced VAT rates, as part of its fundamental review of the VAT system, set out in last year’s Communication on the future of VAT (see [CFE European Tax Report 10/2011](#)).

The Commission is interested in hearing which reduced VAT rates distort competition and contradict EU policy objectives (particularly addressing the reduced rates for water, energy, waste management and housing). Finally, the consultation asks how similar goods and services should be treated for VAT purposes, taking into account technological progress.

Under the current EU VAT Directive, member states must apply a standard VAT rate of at least 15%, with the option of applying one or two reduced VAT rates, of minimum 5%, to goods and services included on an exhaustive list annexed to the Directive which is to be

INDIRECT TAX

strictly interpreted. A number of derogations, some of them political concessions, have caused the EU VAT system's current complexity.

Responses may be submitted until 3 January 2013.

READ MORE (click to open):

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

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

Consultation paper: [EN](#) (available in all EU languages on consultation website)

Ecofin Council approves VAT mini one-stop shop for telecom, broadcasting and e-services

At its meeting on 9 October 2012, the Ecofin Council adopted the Commission's proposal of 13 January 2012 for a Regulation introducing a "mini one-stop shop" for VAT compliance of (EU- and non-EU) providers of telecommunications, broadcasting or electronic services to consumers (see [CFE European Tax & Professional Law Report January 2012](#)). The Regulation shall be applied as of 1 January 2015.

READ MORE (click to open):

Press release (p.13): [EN](#)

Text in the EU Official Journal: [EN](#) (all EU languages available)

Addendum to the Council decision: [EN](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD Global Forum on tax transparency publishes further country reviews; further countries joining Multilateral Convention

On 29 October 2012, the OECD announced that the Czech Republic, Malta and New Zealand signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, following the signature by Romania earlier in October. Lithuania, Nigeria, Gabon, Kazakhstan and Latvia signed letters of intent to sign the Convention; such letters had earlier been received from Albania, Belize, Estonia, Morocco and Niue (territory of New Zealand), bringing the number of states participating or having expressed their willingness to participate to more than 50.

The OECD Global Forum has adopted a further 7 "Phase 1" reports (Russia, Slovenia and several smaller island states), 2 Combined reports (Argentina and South Africa) and 3 Supplementary reports (Liechtenstein, Monaco and Uruguay). "Phase 1" reports concern the legislative framework while "Phase 2" reports examine the exchange of information in practice. So far, "Phase 1" reports on 88 jurisdictions have been completed.

READ MORE (click to open):

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

CUSTOMS

European Commission publishes 2013 version of Combined Nomenclature

On 9 October 2012, the European Commission adopted the Implementing Regulation on the tariff and statistical nomenclature and on the Common Customs Tariff. The document was published in the EU Official Journal of 31 October 2012.

READ MORE (click to open):

Official Journal: [EN](#) (all EU languages available)

OTHER TAX POLICY

Commission taxation paper: Tax reforms in EU Member States

On 12 October 2012, the European Commission has published its 2012 report on tax reforms in EU Member States, subtitled "Tax policy challenges for economic growth and fiscal sustainability". The report summarises recent reforms to various kinds of taxes like personal and corporate income taxes, property taxes, VAT and excise duties and social security contributions (displayed by tax and by country). Another chapter is devoted to VAT reform. The last chapter deals with the challenges of fiscal consolidation, stimulating growth and improving tax governance.

READ MORE (click to open):

Taxation Paper 34: [EN](#)

OTHER EU POLICY

VAT and tax havens initiative are main tax topics in Commission's 2013 work programme

On 23 October 2012, the European Commission has presented its 2013 work programme with a detailed list on planned legislative and non-legislative initiatives, to be found in the Annex. The main emphasis of the programme is on economic growth. Envisaged measures in the field of taxation include a standard VAT declaration which will be optional for business, legislation proposals for reviewing the scope of reduced VAT rates and an initiative against tax havens.

In criminal law, the Commission announces a proposal to establish a European Public Prosecutor's Office to fight against crimes affecting the EU budget (such as VAT fraud) and a harmonisation of the definition of money laundering and the sanctions that can be imposed.

Concerning the profession of tax adviser, the Commission refers to the modernisation of the Professional Qualifications Directive proposed already in late 2011. The proposal foresees a mutual evaluation of member states' qualification requirements and reserved activities for which a methodology should be prepared.

A couple of measures relate to the review of the EU state aid regime, including a general block exemption regulation proposal.

READ MORE (click to open):

Commission work programme: [EN](#) (all EU languages available)

PROFESSIONAL QUALIFICATIONS

EP IMCO drafts 732 amendments to Professional Qualifications proposal

On 17 and 23 October 2012, the IMCO (Internal Market and Consumer Protection) Committee of the European Parliament has published its suggested amendments to the European Commission's proposal for a review of the Professional Qualifications Directive, presented in December 2011. These come in addition to the amendments proposed by rapporteur MEP Bernadette Vergnaud presented in July 2012 (see [CFE European Tax & Professional Law Report July 2012](#)). A number of the new amendment proposals are relevant for the profession of tax advisers: these concern the request for introduction of professional cards for a given profession (amendment proposals 221, 232), the deletion of tacit authorisation if a member state fails to validate the professional card of a professional who seeks to practice permanently in another member state (amendment proposals 297, 308, 311) or the definition of the criteria for allowing partial access to a regulated profession (amendment proposals 340, 341). A number of amendment proposals also aim at reducing the Commission's powers in the adoption of implementing and delegated acts.

The plenary vote of the EP is scheduled for 12 March 2013.

READ MORE (click to open):

IMCO draft report and amendment proposals: [EN](#) (other EU languages available)

AUDIT

EP Committees at odds over audit proposals

Opinions of the Economic and Monetary Affairs (ECON, rapporteur Kay Swinburne, UK Conservatives) and the Industry, Research and Energy (ITRE, rapporteur Jürgen Creutzmann, German Liberals) Committees on the Audit Directive and Regulation proposals diverge in a number of crucial points. One of these is the mandatory rotation of audit firms doing audits of public interest entities: The European Commission has proposed 6 years as a general rule, the ITRE Committee favours 14 years, the rapporteur MEP Sajjad Karim (UK Liberals) in the Legal Affairs (JURI) Committee would be satisfied with 25 years while the ECON Committee sees no need for mandatory rotation at all. ECON and ITRE also propose an obligatory public tender for public interest audits.

The prohibition of audit firms doing public interest audits to offer non-audit related services such as tax advice, which was proposed by the Commission should be maintained, according to ITRE, while JURI and ECON propose alleviations. None of the draft reports criticise the opening of audit firms to ownership of outside (meaning non-professionals) investors.

The plenary vote is currently scheduled for 11 March 2013.

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

JURI draft report (5.9.) on the Audit Directive: [EN](#) (all EU languages available)

JURI draft report (5.9.) on the Audit Regulation: [EN](#) (all EU languages available)

Further JURI amendments to Audit Regulation (9.11.):

- Part 1: [EN](#) (other languages available)
- Part 2 : [EN](#) (other languages will be available)

ECON draft opinion and amendments: [EN](#) Regulation, [EN](#) Directive (other EU languages available)

ITRE draft opinion and amendments: [EN](#) Regulation, [EN](#) Directive, (other EU languages available)

IMPRESSUM



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