



DIRECT TAX

Commission sees discrimination in Dutch treatment of Dutch-sourced dividends paid to EU/EEA insurance companies

On 16 April 2014, the European Commission requested the Netherlands to end the discriminatory taxation of dividends received on shares held by insurance companies established in another Member State or in an EEA country. Dutch insurance companies are effectively not taxed on dividends received on shares held in the framework of unit-linked insurances. They can deduct the increase of the obligation to pay the dividends on to their policyholders from the dividends received. This reduces the corporate tax base concerning these dividends to zero, while any withholding tax is credited. However, insurance companies established in the EU or the EEA receiving Dutch dividends on shares held in the framework of unit-linked insurance on the gross dividends are taxed, without the possibility of a credit. The request takes the form of a reasoned opinion.

READ MORE (click to open):

April 2014 infringements package: [EN](#)

Commission consults on inheritance and other cross-border tax problems of individuals

On 10 April 2014, the European Commission has opened two public consultations, both until 3 July 2014:

One is a questionnaire gathering information on tax obstacles experienced by citizens, solution mechanisms in place and views on best practices and possible solutions at EU level.

The other consultation is a follow-up to the Commission's Recommendation 2011/856/EU on double taxation in inheritance tax. The Commission consults on double tax problems experienced, the effectiveness of relief measures, progress since the adoption of aforementioned Recommendation and the stakeholders' opinion on the principles included therein.

READ MORE (click to open):

Inheritance tax problems within the EU:

- Questionnaire: [EN](#)
- Consultation website: [EN](#)

Tax problems of citizens crossing borders:

- Questionnaire: [EN](#)
- Consultation website: [EN](#)

Commission creates expert group on tax problems of individuals

In parallel to the above-mentioned public consultations, the Commission announced the creation of an expert group on removing tax problems facing individuals who are active across borders within the EU. These may include personal income tax as well as inheritance or gift tax. Its (one-year) mandate will be to assist the Commission in the formulation of policy initiatives. Work is scheduled to start already in June 2014. After an extension of the deadline, experts on these fields can now apply to the Commission until 23 May 2014.

READ MORE (click to open):

General information: [EN](#)

Call for applications: [EN](#)

ECJ: Member state may not exclude dividends paid by nationally established companies to an investment fund in a non-Member State from a tax exemption if there is an obligation of mutual administrative assistance

As the European Court of Justice in its judgment of 10 April 2014 on the Polish preliminary ruling case C-190/12, Emerging Markets Series of DFA Investment Trust Company, further pointed out, it is for the national court to examine whether the agreed mechanism for the exchange of information enables the tax authorities to verify the information provided by the investment fund.

DIRECT TAX

READ MORE (click to open):

Press release: [EN](#)

Judgment: [EN](#)

READ MORE (click to open):

Digital Economy:

- Discussion Draft: [EN](#)
- Comments Received: [EN](#)
- CFE Opinion Statement FC 7/2014: [EN](#)

Recordings of public consultation meetings: [EN](#)
(select Directorate 3 in the search mask)

BEPS Actions on digital economy taxation, treaty abuse and hybrid mismatches: CFE submits 3 Opinion Statements

The CFE took part in all three public consultations on BEPS actions open in April 2014. These were Actions 1 (tax challenges of the digital economy), 2 (neutralise the effect of hybrid instruments and entities) and 6 (preventing the granting of treaty benefits in inappropriate circumstances). The BEPS Action plan presented by the OECD in July 2013 is a list of 15 measures designed at preventing “base erosion and profit shifting” (BEPS) through corporate tax planning (see [CFE European Tax & Professional Law Report July 2013](#)). All three statements were prepared by the CFE Fiscal Committee’s BEPS working group.

Recordings of the OECD public consultation meetings on the digital economy (Action 1) and tax treaty abuse (Action 6) have been made available online. The meetings on hybrid mismatches (Action 2) and transfer pricing documentation and country by country reporting (Action 13) will take place on 15 and 19 May 2014 respectively.

READ MORE (click to open):

Hybrid mismatches:

- OECD website: [EN](#) (FR available):
- 1st Discussion Draft: “Recommendations for Domestic Laws”: [EN](#)
- 2nd Discussion Draft: “Treaty Aspects of the Work on Action 2 of the BEPS Action Plan”: [EN](#)
- Registration for 19 May public consultation: [EN](#)
- CFE Opinion Statement FC 9/2014: [EN](#)

Tax Treaty Abuse:

- Discussion draft: [EN](#)
- Comments received: [EN](#)
- CFE Opinion Statement FC 5/2014: [EN](#)

INDIRECT TAX

CFE comments on tax exemptions for public bodies and in the public interest, the VAT cost-sharing exemption and a standard VAT return

The Statement on VAT legislation on public bodies and tax exemptions in the public interest responds to a public consultation by the European Commission (see [CFE European Tax & Professional Law Report October 2013](#)) and supports a simplification of the EU VAT regime by demonstrating practical difficulties of the current system.

The Statement on the VAT exemption for independent groups of persons, also known as the cost-sharing exemption, was issued on the occasion of the Commission’s infringement proceeding against Luxembourg (see [CFE European Tax & Professional Law Report February 2014](#)).

Finally, the Opinion Statement on a common standard VAT return expresses CFE’s support for the Commission’s Directive proposal of 23 October 2013 (see [CFE European Tax & Professional Law Report October 2013](#)).

All three statements were prepared by the CFE Fiscal Committee.

READ MORE (click to open):

CFE Opinion Statement FC 4/2014 (public interest/bodies exemptions): [EN](#)

Statement FC 6/2014 (cost-sharing exemption): [EN](#)

CFE Opinion Statement FC 8/2014 (standard VAT return): [EN](#)

INDIRECT TAX

Registration for Luxembourg VAT conference open

Registration for the conference on the 2015 VAT changes (mini-one-stop-shop for e-services, telecom and broadcasting), hosted by the European Commission and the Luxembourg Chamber of Commerce on 15 May 2014, is open. Participation is free of charge.

READ MORE (click to open):

Registration: [EN](#)

Programme flyer: [EN](#)

ECJ dismisses UK action against EU-11 Financial Transaction Tax

On 30 April 2014, the European Court of Justice has dismissed the UK's action against the EU Council's decision to authorise 11 member states to introduce a financial transaction tax (FTT) by way of enhanced cooperation. The UK argues that the FTT will have extraterritorial effects and impose costs on non-participating countries like the UK. The Court considers the action against the Council's decision as premature, as the Council's authorisation did not concern the content of the FTT Directive itself and does not (yet) impose any obligations on the UK.

READ MORE (click to open):

Press release: [EN](#)

Decision: [EN](#)

Commission requests business input for draft explanatory notes on the VAT treatment of services connected with immovable property

The European Commission is planning to issue explanatory notes on the VAT treatment of services connected with immovable property in mid-2015, to help applying the changes to the place of supply rules included in Regulation 1042/2013/EU which will be effective as of 1 January 2017. Business is invited to submit any issues identified in this area and sugges-

tions for solution by 23 May 2014.

READ MORE (click to open):

Request for input: [EN](#)

OECD VAT/GST guidelines endorsed by 86 countries

At the OECD's Global Forum on VAT on 17-18 April 2014, the governments of 86 countries have endorsed the first three chapters of the OECD VAT/GST guidelines for cross-border trade, as adopted by the OECD in January 2014. These Guidelines set standards in two key areas: VAT neutrality and making taxes on B2B trade in services and intangibles destination-based.

READ MORE (click to open):

OECD News release: [EN](#)

International Guidelines: [EN](#)

Commission: Hungary may not restrict sale of tobacco products released for consumption

On 16 April 2014, the European Commission has requested Hungary to amend its legislation that applies a sales restriction on tobacco products already released for consumption. Hungary levies excise duties on tobacco by means of tax markings on the product. When the tax rate (VAT, excise duty) changes, tobacco products fitted with tax markings bearing the old tax rate cannot be sold by wholesalers and importers after the expiry of 15 days following the entry into force of the new tax rate. Excise duties are harmonised under an EU Directive. That Directive does not allow the restriction of the trade in tobacco products once they are released for consumption. The request takes the form of a reasoned opinion (the second stage of an infringement procedure). If the legislation is not brought into conformity 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](#) (most EU languages available)

INDIRECT TAX

Commission requests Ireland to ensure that private boats do not use lower taxed fuel

On 16 April 2014, the European Commission has formally requested Ireland to amend its legislation to ensure that private pleasure boats can no longer buy lower taxed fuel intended for fishing boats. Fuel that can benefit from a reduced tax rate has to be marked by coloured dye. Private leisure boats risk heavy penalties if they travel to another member state with marked fuel legally bought in Ireland. The Commission's request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer Ireland to the EU's Court of Justice.

READ MORE (click to open):

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

Commission publishes explanatory notes on VAT changes for e-services, telecommunications and broadcasting

On 3 April 2014, the European Commission has published explanatory notes on the changing place of supply rules for telecommunications, broadcasting and electronic services that enter into force in 2015. The objective of these notes is to provide a better understanding of the Council Implementing Regulation (EU) No 1042/2013. The Commission observes that the notes are not legally binding and may be subject to change.

READ MORE (click to open):

Explanatory notes: [EN](#)

ECJ specifies criteria for tax rates on fuels not listed in Energy Tax Directive

On 3 April 2014, the European Court of Justice decided in joined cases C-43 and 44/13, Kronos Titan

and others, on the meaning of 'equivalent heating fuel or motor fuel', for the purposes of determining the tax rate applicable on fuels not mentioned in the Energy Products Directive 2003/96/EC: According to the Court, it must first be determined whether the product is used as heating fuel or motor fuel, before identifying for which of the fuels listed the product is a substitute in terms of use or which of those fuels is, by its properties and intended use, the closest to it.

READ MORE (click to open):

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

Advocate-General Opinion: [EN](#) (all EU languages)

Commission proposes single member limited liability companies

On 9 April 2014, the European Commission has proposed a Directive to introduce single member private limited liability companies (SUP - Societas Unius Personae) at national level, to help in particular SME to set up cross-border subsidiaries. The proposal is a reaction to the failure of the 2008 proposal for a Regulation establishing a European Private Company (SPE - Societas Privata Europaea). Unlike the SPE proposal, the SUP proposal would not introduce a new legal company form but oblige member states to make available in their national laws a company form offering certain characteristics. Two of these are a minimum starting capital of 1€ and the possibility to set up a company on-line. Seat and headquarters of an SUP can be in two different member states. The proposal focuses on matters related to the setting up of a company. Most other legal aspects would have to be dealt with by national (company, labour, tax etc.) law. The Commission hopes that this modest approach will increase acceptance of the idea by member states.

READ MORE (click to open):

Directive proposal COM(2014)212: [EN](#) (other language versions available soon on [Eur-Lex](#))

FAQs: [EN](#) (FR available)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD Global Forum issues 12 new transparency reports

On 24 April 2014, the Global Forum on Transparency and Exchange of Information for Tax Purposes issued 12 new reports to assess the extent to which jurisdictions have implemented the international standard for exchange of information on request in their legal framework (phase 1 reviews) and practice (phase 2 reviews). The new reports include 3 EU member states, Latvia (phase 1), Slovakia and Slovenia (both phase 2), bringing the total number of jurisdictions assessed to 132 (phase 1) / 54 (phases 1 + 2).

READ MORE (click to open):

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

OTHER TAX POLICY

April 2014 events already included in the March Report

Articles on the following events in April 2014 have already been covered in the March 2014 Tax & Professional Law Report:

- ECJ judgment on consortium group relief in the UK (1 April)
- Recording of OECD BEPS webcast of 2 April
- EP plenary vote on Parent-Subsidiary proposal (2 April)
- EP plenary vote on audit reform compromise (3 April)

READ MORE (click to open):

CFE European Tax & Professional Law Report March 2014: [EN](#)

High level group on business services calls for EU double tax agreement and mandatory tax arbitration

On 9 April 2014, the High Level Group on business services, inaugurated by Commissioners Antonio Tajani and Michel Barnier in March 2013, presented their final report on how the EU can increase innovation and productivity gains in services. In tax matters, the group recommends “a multilateral EU-wide double tax agreement” and a legislative proposal containing “a requirement on tax authorities to settle between them a dispute, when a business is subject to demands on the same money stream from two or more given authorities”.

READ MORE (click to open):

Final report: [EN](#)

PROCEDURAL LAW

Rights of taxpayer in exchange of information upon request: CFE comments on ECJ’s Sabou judgment

The CFE has commented on the decision of the European Court of Justice in case C-276/12, Sabou, concerning taxpayer’s rights in case of exchange of information upon request. In its judgment of 22 October 2013, the ECJ stated that the participation of the taxpayer in the hearing of a witness in tax inspection procedures (as provided for by Czech law), is not obligatory where the hearing is carried out by another state in the context of a request for information in accordance with the Mutual Assistance Directive (77/799/EEC). As the Opinion Statement remarks, the CFE would have welcomed a stronger emphasis on the taxpayer’s rights in the judgment. The Statement was prepared by the ECJ Task Force of the CFE.

READ MORE (click to open):

Opinion Statement ECJ-TF 2/2014: [EN](#)

ACCOUNTING / CRIMINAL LAW

EP votes for criminal law harmonisation concerning VAT fraud but postpones country-by-country publication of tax payments

On 15 and 16 April 2014, in its last working week before the European elections, the plenary of the European Parliament adopted the Directive on “Disclosure of non-financial and diversity information by certain large companies and groups”, and a Directive on “Fight against fraud to the Union’s financial interests by means of criminal law”. The former introduces a number of reporting requirements of large companies, mostly in the area of corporate social responsibility. While the vote on this Directive follows a compromise reached with the EU Council in February 2014 (according to which it was agreed that country-by-country reporting of tax payments will not be introduced at this stage) and is likely to be adopted by the Council at one of its next meetings, the positions of the EP and the Council still differ in the latter dossier which contains harmonisation of certain criminal offences and penalties: Unlike the Council, the EP wants that Directive to apply also on VAT fraud. Discussions on the criminal law dossier are likely to continue in the second half of 2014, with the new Parliament.

READ MORE *(click to open)*:

Preliminary versions:

- Disclosure of non-financial and diversity information by certain large companies and groups (p.312 ff): [EN](#)
- Fight against fraud to the Union’s financial interests by means of criminal law (p.278 ff): [EN](#)

OTHER TAX POLICY

ECJ: Data Retention Directive null and void

On 8 April 2014, the EU Court of Justice decided in joined cases C-293 and 594/12 that the Data Retention Directive 2006/24/EC is invalid, with retroactive effect (going even further than Advocate-General Cruz Villalón in his opinion). The Court explained that the Directive entails a wide-ranging and serious interfe-

rence with the fundamental rights to respect for private life and to the protection of personal data. This is not justified as the Directive does not respect the principle of proportionality, to the extent that its scope extends on persons without any evidence capable of suggesting that their conduct might have a link with serious crime, including persons whose communications are subject to professional secrecy. Moreover, the Directive lacks objective criteria limiting access to the data by public authorities and determining the length of the retention period as well as safeguards against abuse and unauthorised access and a requirement that the data obtained rests within the EU. The ECJ had been asked for this preliminary ruling by the Austrian Constitutional Court and the Irish High Court.

READ MORE *(click to open)*:

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

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

Advocate-General Opinion: [EN](#) (all EU languages)

CFE NEWS

E-versions of the 2010-2013 CFE Forum Reports available

The CFE Forum Reports on European Taxation contain contributions related to the topics of the CFE Forums, provided by Forum speaker and other authors, edited by Servaas van Thiel. The two reports covering the years 2010/2011 and 2012/2013 can now be downloaded from the CFE website.

READ MORE *(click to open)*:

CFE Forum Reports: [EN](#)

PROFESSIONAL QUALIFICATIONS

ECJ Advocate-General: Registration as lawyer in a member state after short-term registration in another member state is no abuse of right

On 10 April 2014, EU Court of Justice Advocate-General Nils Wahl has issued his opinion on joined cases C-58 and 59/13, Torresi, concluding that the right of a lawyer to establish himself in another member state does not depend on the length of time that he has been registered in the member state where he obtained his qualification, or on the actual exercise of the activity as a lawyer in this member state. Thus, member states cannot refuse registration as a foreign lawyer to their own nationals who return to their country shortly after obtaining a professional qualification as a lawyer in another member state. Such behaviour was not abusive.

Another relevant question was whether national bodies which decide on appeals against decisions of professional bodies are to be considered a court of tribunal competent of asking the ECJ for a preliminary ruling, which the Advocate-General affirmed.

READ MORE *(click to open)*:

Advocate-General Opinion: [DE](#) (most EU languages available)

CROSS-BORDER SERVICES

European Commission reports on state of play in cross-border professional indemnity insurance

On 31 March 2014, the European Commission issued a staff working document on cross-border professional indemnity insurance (PII), summarizing the current EU law situation, the Commission's work in improving access to cross-border insurance cover and various approaches the Commission has come across. Apart from taking part in the Commission's 2013 public consultation (see [CFE European Tax & Professional Law Report May 2013](#)), CFE has been in bilateral contact with the Commission which is interested in the practice of framework contracts that CFE member organisations in Austria, the Czech Republic, Germany, Ireland, Slovakia, Spain

and the UK have concluded with insurance companies, providing for insurance cover for tax advisers who practice cross-border. This practice is also mentioned in the Commission's document. CFE believes that there cannot be an imposed one-size-fits-all EU solution for different kinds of services, as the professional activities, their associated risks and the degree of regulation differ too much between countries and between professions. CFE is continuing its discussions with the Commission, with a view to reaching a solution that facilitates cross-border activity, however avoiding complicated solutions to a problem of little practical relevance for tax advisers.

READ MORE *(click to open)*:

Staff working document: [EN](#)

CFE Opinion Statement PAC 3/2013 on cross-border professional indemnity insurance: [EN](#)

AUDIT

Council adopts EU audit reform

On 14 April 2014, the EU Council adopted the revised Audit Directive and new Regulation for audits of public interest entities, following the final adoption of these acts by the European Parliament's plenary on 2 April (for more information on the reform, see [CFE European Tax & Professional Law Report January 2014](#)).

READ MORE *(click to open)*:

Press release: [EN](#)

IMPRESSUM

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Confédération Fiscale Européenne
-The European Federation of Tax Advisers-
188A, Av. de Tervuren
B-1150 Brussels

Editor: Rudolf Reibel, LL.M., CFE Fiscal and Professional Affairs Officer

If you have any suggestions or questions, please feel free to contact the editor:
brusselsoffice@cfe-eutax.org

Layout: Laëtitia Bois, Management Assistant

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