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CFE EVENTS

CFE Forum on 26 March 2015: “Tax governance and tax risk management in a post-BEPS world”

As the BEPS project proceeds to completion, it is crucial that companies, their tax advisers and tax administrations are aware of the implications of the new international framework grounded on transparency, multilateral cooperation and information exchange. With concepts like the “spirit of the law”, “economic substance” and “value creation” coming to the fore, tax mitigation and the structuring of companies’ businesses will have to take into account a larger number of variables and a different set of risks: tax and tax governance will definitely have arrived in the boardroom.

In a “post-BEPS” world, transfer pricing disputes as well as spill-over effects of double taxation and the degree of scrutiny of operations in general by tax administrations are expected to increase.The EU is fully supportive of the BEPS project and is working in parallel on its own programme tackling tax fraud and tax evasion. Close coordination between the EU and OECD will be necessary to ensure that the adoption of OECD solutions does not hinder the exercise of the EU´s fundamental freedoms and that the changes put forward by the EU legislators do not damage the competitiveness of EU businesses.The forthcoming 2015 CFE Forum will address these pressing topics, and will help companies and their tax advisers prepare for the future. Confirmed speakers include high-ranking European Commission officials, businesses, academics and tax practitioners.

READ MORE *(click to open)*:

- Programme and registration: **EN**

DIRECT TAX

OECD starts BEPS consultations on interest deductions, transfer pricing and dispute resolution

Between 16 and 19 December 2014, the OECD has released a total of 6 discussion drafts for public comment. Three of these fall under the heading “Assure that transfer pricing outcomes are in line with value creation”, relating to Actions 8, 9 and 10 of the BEPS Action Plan. The other two concern deductible payments and dispute resolution:

The first transfer pricing-related discussion draft considers the development of rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members. Such new transfer pricing rules will require alignment of returns with value creation. The OECD plans to develop further rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties. To achieve this, the circumstances in which transactions can be re-characterised would have to be clarified. Moreover, rules or special measures for transfers of hard-to-value intangibles would have to be developed.

The second transfer pricing discussion draft concerns the use of profit splits in the context of global value chains, asking when preference to these over one-sided transfer pricing methods should be given, and how these shall be applied in order to achieve outcomes that are in line with value creation.

The third transfer pricing discussion draft concerns the specific transfer pricing aspects of cross-border commodity transactions, an area in which a number or countries have reported difficulties, particularly in determining adjustments to quoted prices, verifying the pricing date and accounting for the involvement of other parties in the supply chain.

The discussion draft on BEPS Action 4 concerns base erosion and profit shifting through deductible payments like interest that can give rise to double non-taxation in both inbound and outbound investment scenarios. It examines existing approaches to tackling these issues and sets out possible alternative approaches that may be recommended as best practices.

Action 14 is seeking to make dispute resolution mechanisms more effective by addressing obstacles that prevent countries from solving treaty-related disputes under mutual agreement procedures, including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases. The deadlines are 16 January for dispute resolution and 6 February 2015 for transfer pricing and interest deductions. An overview on the current state of play in the BEPS process given by the OECD on 15 December 2014 is available online.

READ MORE *(click to open)*:

Interest deductions (BEPS Action 4):
- Press release: **EN**
- Discussion draft: **EN**

Transfer Pricing (BEPS Actions 8, 9, 10):
- Press release: Risk, recharacterisation and special measures: **EN**
- Discussion draft: Risk, recharacterisation and special measures: **EN**
- Press release : Commodity transactions aspects: **EN**
- Discussion draft: Commodity transactions aspects: **EN**, **ES**, **FR**
- Press release: profit splits in global value chains: **EN**
- Discussion draft: profit splits and global value chains: **EN**

Dispute resolution (Action 14) :
- Press release: **EN**
- Discussion draft: **EN**

Webcast: Update on the BEPS project, 15 December 2014: **EN**

READ MORE *(click to open)*:

- Press release, 9 December 2014: **EN**
- Text adopted: **EN**

CFE comments on three BEPS Actions: Transfer pricing documentation and cbcr, digital economy taxation and a multilateral instrument

On 19 December 2014, the CFE submitted three Opinion Statements on the BEPS Action Plan to the OECD, responding to three OECD papers issued on 16 September 2014: Opinion Statement FC 15/2014 comments on the OECD report on a the possibility of creating a multilateral legal instrument to modify bilateral tax treaties (BEPS Action 15). The other two are follow-ups to previous CFE Opinion Statements, commenting on transfer pricing documentation and country by country reporting (Opinion Statement FC 16/2014, BEPS Action 13) and the tax challenges of the digital economy (Opinion Statement FC 17/2014, BEPS Action 1).

READ MORE *(click to open)*:

- Opinion Statement FC 15/2014, a multilateral instrument: **EN**
- Opinion Statement FC 16/2014, transfer pricing documentation and cbcr: **EN**
- Opinion Statement FC 17/2014, tax challenges of the digital economy: **EN**

EU Council adopts minimum GAAR in Parent-Subsidiary Directive

The EU Ecofin Council adopted on 9 December 2014 a common general anti abuse rule (GAAR) in the EU Parent-Subsidiary Directive which has been designed as minimum harmonisation, allowing member states to leave or put in place stricter anti-abuse laws. This second step completes the revision of the Parent-Subsidiary Directive in the light of the fight against tax evasion and tax avoidance; in a first step, a subject to tax clause had been included in July 2014 (see **CFE European Tax & Professional Law Report July 2014**).

CFE issues Opinion Statements on CJEU judgments on taxation of unrealized gains and on fiscal unity

The CFE published two Opinion Statements prepared by its ECJ Task Force, on the court cases DMC, C-164/12 concerning the taxation of unrealized gains upon a reorganisation within the EU and SCA Group Holding, C-39, 40 and 41/13, concerning the requirements to form „fiscal unity“.

READ MORE *(click to open)*:

- ECJ-TF 3/2014 (DMC): **EN**
- ECF-TF 4/2014 (SCA): **EN**

INDIRECT TAX

New VAT rules for e-services, telecommunication and broadcasting are in force

The European Commission has revised its dedicated website collecting information and guidance on the new VAT place of supply and “mini one stop shop” rules for the abovementioned services which apply since 1 January 2015. The Commission estimates that VAT revenues of most EU countries will rise, as a consequence of the rule that electronic B2C services will now be taxed where the consumers are located. In the past, multinational providers of on-line services could benefit from a tax advantage over their local competitors by selling their services through subsidiaries in Luxembourg which has a VAT rate of only 15%.

READ MORE *(click to open):*

- 2015 VAT changes: **EN, DE, FR**

Guide to VAT refund for visitors to the EU

On 23 December 2014, the European Commission published a website on “tax free shopping”, containing information on VAT refund for persons residing in non-EU countries visiting the EU.

READ MORE *(click to open):*

- Refund guide: **EN**

OECD consults on international VAT/GST guidelines

On 18 December 2014, the OECD has opened a public consultation on two proposed new elements in the international VAT/GST Guidelines issued by OECD in 2014. The two discussion drafts concern the place of taxation of business-to-consumer supplies of services and intangibles (B2C Guidelines) and provisions to support the application of the Guidelines in practice (Supporting provisions).

The discussion draft on the B2C Guidelines provides a response to the key conclusion on VAT/GST formulated in the OECD September 2014 Report on Tax Challenges of the Digital Economy (BEPS Action 1). It presents a set of common principles for determining the place of taxation for B2C supplies of services and intangibles, in accordance with the destination principle. It also presents the recommended approach for collecting the VAT/GST on these supplies, focusing in particular on supplies by non-resident suppliers. The discussion draft recommends that non-resident suppliers be required to register and remit the VAT/GST in the jurisdiction of taxation and suggests that countries implement a simplified registration and compliance regime to facilitate compliance for non-resident suppliers. It presents the possible key features of such a simplified regime.

The draft Supporting provisions present approaches for facilitating the proper and consistent implementation of the principles of the Guidelines in national legislation, as well as their consistent interpretation by tax administrations.Interested parties can comment on these drafts by 20 February 2015.

READ MORE *(click to open):*

- Press release: **EN**
- Discussion drafts: **EN**
- Report on Tax Challenges of the Digital Economy (BEPS Action 1): **EN**

Council reports on Financial Transactions Tax state of play

The Italian EU Council presidency published a report on the progress on the proposed Financial Transactions Tax (FTT) during its term, dated 4 December 2014. The member states participating in the enhanced cooperation agree that a FTT should be introduced progressively, with shares and some derivatives as a first step. While the EU FTT should be harmonised, participating member states should be left the possibility to continue taxing financial products not (yet) covered by the EU FTT. However, further key issues are still unresolved, such as the types of derivatives to be included as a first step, general taxation principles (residence and/or issuance) and the collection mechanism.

READ MORE *(click to open):*

- FTT progress report: **EN**

Council authorises SME VAT exemption in Romania

On 16 December 2014, the EU Council adopted a decision allowing Romania to continue applying a derogation from the EU VAT Directive exempting small businesses whose annual turnover is below € 65,000. It concerns nearly 85% of Romanian taxpayers, who contribute to only 1.81% of VAT revenues. The decision is valid from 1 January 2015 to 31 December 2017.

READ MORE ***(click to open):***

- Text of the EU Council Decision (reference: 15430/14): **EN**

Commission publishes impact assessment of the VAT reverse charge mechanism

On 19 December 2014, the European Commission has published a study providing for an impact assessment of the optional application of the reverse charge mechanism (RCM).The VAT Directive, or derogations from it adopted by the EU Council, allow member states under certain conditions to apply a VAT reverse charge mechanism in specific cases as an anti-fraud tool in certain vulnerable sectors. However, the application of the RCM increases reporting and filing obligations for businesses concerned. Throughout EU countries, the RCM is most commonly applied for construction services, waste and greenhouse gas allowances. The study looks at the extent to which member states make use of the optional RCM and which portion of the overall VAT receipts is concerned and would be concerned if all countries made full use of the optional RCM, evaluating the economic importance, the cash-flow impacts and the administrative burden on business of applying the RCM.

READ MORE ***(click to open):***

- Study: **EN**
- Summary: **EN/FR**

Commission publishes outcomes of consultation on VAT on public bodies and public interest exemptions

On 18 December 2014, the European Commission published its summary of the responses received to the public consultation on the review of existing VAT legislation on public bodies and tax exemptions in the public interest, conducted between October 2013 and April 2014.A large number of respondent were public bodies seeking to maintain the current system, contradicted by private businesses arguing against distortions created by public bodies offering goods and services in direct competition with the private sector. The Commission has not commented on how it intends to follow up on the matter but has previously uttered concerns on the lack of neutrality, distortions of competition and complexity resulting from public bodies and public interest exemptions, e.g. in its 2011 Communication on the future of VAT (**COM(2011)851**).

READ MORE ***(click to open):***

- Consultation website : **EN** (DE/FR available)
- List of contributions: **EN**
- Summary report: **EN**

OTHER TAX POLICY

Council issues Report on Tax Issues 2014-2

The EU Ecofin Council of 9 December 2014 endorsed its biannual report on tax issues to the European Council of December, summarising progress and standstill in EU tax legislative and policy dossiers under the Italian Council presidency in the second half of 2014. The report displays the new impetus the OECD/G20 BEPS Action Plan has given to the discussions on the proposals for a CCCTB and the review of the Interest & Royalties Directive, notes the recent changes to the Parent-Subsidiary Directive and mentions dossiers where agreement in the EU Council has not been reached, namely the Financial Transaction Tax, the proposal on the VAT treatment of vouchers and a standard VAT return. In the area of tax policy coordination, the report mentions the work of the EU Code of Conduct Group on business taxation, in particular the discussions on patent box regimes and hybrid mismatches.

READ MORE *(click to open):*

- Report on tax issues: **EN**
- Italian Council Presidency´s CCCTB proposal: **EN**
- Code of conduct group report: **EN**
- EU Council conclusions on Code of conduct Group report: **EN**

"Fairness in taxation" included in Commission´s 2015 work programme – Energy taxation reform dropped

On 15 December 2014, the European Commission presented its work programme for 2015 which has been worded relatively concise, compared to the previous Commissions´ work programmes. The paper includes a roadmap containing 23 priorities for action to be taken by the end of the year. One of these is titled "a fairer approach to taxation", announcing measures to move to a system on the basis of which the country where profits are generated is also the country of taxation, including the digital economy. The Commission observes that this would require agreement on a CCCTB. There would also be a swift proposal concerning the automatic exchange of information between tax authorities on cross-border tax rulings.With its work programme, the new Commission has listed the 80 (out of 450 pending) legislative proposals it is planning to withdraw, including the revision of the EU Energy Tax Directive, as the version currently discussed in the Council has moved too far from the intention of the 2011 proposal and no agreement is in sight. Other proposals to be withdrawn concern taxes related to passenger cars and the approximation of excise duty rates for alcohol/ic beverages. Not all decisions to withdraw legislative proposals are politically motivated; some proposals have simply become obsolete over time.

READ MORE *(click to open):*

- Press release of 15 December 2014: **EN** (All EU languages)
- Work programme: **EN** (All EU languages)

Commission publishes studies on cross-border tax obstacles and tax compliance cost

On 19 December 2014, the European Commission published two studies related to obstacles to cross-border activity of individuals and businesses:The first is a study on removing cross-border tax obstacles for individuals and employers, in particular employers posting workers abroad. The study lists challenges of a very different nature such language and technology issues as well as administrative and legal problems. The report subsequently identifies best practices applied by member states and adds further suggestions to make the system clearer and simpler and to remove disincentives to cross-border activity.The second study seeks to measure the average tax compliance costs arising from certain cross-border activities of businesses, also trying to find out which member states' tax systems operate more cost effectively than others.

READ MORE *(click to open):*

Cross-border tax obstacles:
- Study: **EN**
- Summary: **EN, FR**

Tax compliance cost:
- Study: **EN**
- Summary: **EN, FR**

Commission and IMF host conference on corporate debt bias

On 23 and 24 February 2015, the European Commission and the International Monetary Fund will host a one-and-a-half day conference in Brussels, titled: „Corporate debt bias: Economic insights and Policy Options". Corporate debt bias refers to the preference of debt over equity given by certain jurisdictions, due to the non-deductibility of the return paid on equity. While high debt entails a stability risk, shifting debt can also be a tool for minimising taxes. Sessions of the conference concern debt as an issue the OECD BEPS Action Plan, monitoring of the debt bias in the European Semester, debt in the financial sector and remedies such as interest deductibility restrictions. Registration is free of charge.

READ MORE *(click to open):*

- Programme and registration: **EN** (DE, FR available)

OECD publishes revenue statistics

According to the OECD Revenue Statistics 2014, the tax burden (tax to GDP ratio) has reached 34.1% which is the highest since the financial crisis. The largest increases in 2013 occurred in Portugal, Turkey, the Slovak Republic, Denmark and Finland. The largest falls were in Norway, Chile and New Zealand. While the OECD countries with the highest tax burden are all located within Europe (Denmark: 48.6%, France: 45% and Belgium: 44.6%), none of the OECD members with the lowest ratio is European. The share of personal and corporate income taxes of the total revenue generated (33.6% in average) has slightly decreased from 36% in 2007. Social security contributions have been on the increase, gaining 1.6 percentage points, to an average 26.2% of total revenue. Average VAT rates are at an all-time high, with an average rate of 19.1%, and accounting for approximately 20% of all revenue.

READ MORE *(click to open):*

- Press release with interactive comparison tool: **EN** / **FR** / **DE**
- Revenue Statistics 1965-2013: **EN, FR**
- Consumption Tax Trends 2014: **EN**
- The Distributional effects of consumption taxes in OECD countries: **EN**

READ MORE *(click to open):*

- Press release, 9 December 2014: **EN**
- Text adopted: **EN**

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

Council includes OECD automatic information exchange criteria in EU Directive

At its meeting on 9 December 2014, the EU Ecofin Council adopted an amendment to the EU Directive on Administrative Cooperation in Direct Taxes to match the Directive with the OECD “global” standard for automatic exchange of information. The first information exchange according to the new rules is due to take place by the end of September 2017. Austria has been granted a delay of one year but the country has declared that it does not intend to make use of this derogation.

Juncker: Requiring companies to disclose tax strategy and automatic exchange of tax rulings would not need unanimity

In an interview with the German daily newspaper Frankfurter Allgemeine Zeitung, European Commission president Jean-Claude Juncker expressed his view that the planned automatic exchange of information on international tax rulings could possibly be introduced without unanimity voting in the EU Council, stating that the planned rules concern administrative cooperation, where EU legislation can be passed with a qualified majority of member states (and the European Parliament on an equal footing), instead of unanimity which is required for tax legislation. Juncker also said that the proposal would not be limited to exchange of rulings but could also concern rules requiring companies to disclose their tax strategy. The proposal should be presented by summer 2015.

READ MORE *(click to open):*

- EU Observer article, 10 December 2014: **EN**
- Frankfurter Allgemeine interview with Jean
- Claude Juncker, 9 December 2014: **DE**

Commission receives mandate to negotiate anti-fraud agreement with Norway

On 9 December 2014, the EU Ecofin Council adopted a decision authorising the European Commission to open negotiations for an agreement between the EU and Norway on administrative cooperation, combating tax fraud and recovery of claims in VAT.

OTHER TAX POLICY

EP working on Annual Tax Report and reports on tax fairness

The European Parliament is currently working on a non-legislative Annual Tax Report commenting on recent developments in EU and international taxation and trying to strike a balance between "boosting the benefits of the internal market", "fighting tax fraud, tax evasion and aggressive tax planning and tax havens" and "promoting viable tax coordination for a long-term, growth oriented economic policy". The draft by Greek social democrat MEP Eva Kaili speaks in favour of a compulsory CCCTB, country by country reporting for all sectors and exchange of cross-border tax rulings. The EP´s ECON Committee is expected to vote on the draft in January 2015. The plenary vote is envisaged for 10 March. CFE has met with MEPs and sent submissions to deliver input to the process. In addition, the EP is planning to issue two reports on tax fairness.

READ MORE *(click to open):*

- Draft Annual Tax report, 12 November 2014: **All EU languages**
- Amendment proposals 1-299, 19 December 2014: **Several languages**
- Planned reports on tax fairness, press release of 4 December 2014: **EN**

PROCEDURAL LAW

CJEU dismisses UK restriction of recovery of taxes levied in violation of EU law

On 18 December 2014, the EU Court of Justice (CJEU) has ruled in an infringement proceeding (C-640/13) against the UK that the country infringed EU law by curtailing retroactively and without notice or transitional arrangements the right of taxpayers to recover tax levied in breach of EU law. The CJEU already had to decide on the same matter in 2013, in a preliminary ruling procedure upon request of the UK Supreme Court (see **CFE European Tax & Professional Law Report December 2013**).

READ MORE *(click to open):*

- Judgment: **EN** (FR available)

STATE AID

Luxembourg willing to cooperate while Commission extends information enquiry to all member states

On 17 December 2014, the European Commission has enlarged the enquiry into the tax ruling practice under EU state aid rules, now asking all member states to provide information about their tax ruling practice, in particular to confirm whether they provide tax rulings, and to request a list of all companies that have received a tax ruling from 2010 to 2013.On the following day, Luxembourg declared its willingness to fully cooperate by submitting to the Commission the requested information on tax rulings, as well as information on its patent box scheme, including the details of the 100 largest companies falling under the regime. The country had previously objected to being singled out by the Commission, claiming that member states´ tax ruling practices should be scrutinised equally.

READ MORE *(click to open):*

- Press release, 17 December 2014: **EN** (DE, FR available)

New "Lux leaked" tax rulings published

On 9 December 2014, the International Consortium of Investigative Journalists published a new series of confidential tax rulings issued by the Luxembourg tax authorities between 2003 and 2011, concerning 35 multinational companies such as Microsoft-owned Skype and Walt Disney.

READ MORE *(click to open):*

- News release on ICIJ website: **EN**

ANTI MONEY LAUNDERNG

EU institutions agree on beneficial ownership registers

On 16 December 2014, the European Parliament and the EU Council have reached political agreement on the revision of the EU Anti Money Laundering Directive. The agreed version seems to include the introduction of central registers listing information on the ultimate beneficial owners of EU-based corporate and other legal entities, as well as trusts. These registers will be accessible by competent authorities, "obliged entities" such as tax advisers and other professionals entrusted with anti-money laundering obligations and, subject to certain conditions, the public. The agreed text which is not yet public will still have to be formally adopted by the EP´s competent ECON and LIBE Committees, the EP plenary and the Council.

READ MORE *(click to open):*

- Press release: **EN**

CFE EVENTS

CFE PAC Conference „Tax Transparency - How to make it work?"

72 tax professionals from all over Europe, representatives of several tax administrations, the OECD, the European Parliament, academics and staff of tax professional and trade associations took part in the 7th CFE Professional Affairs Conference of CFE on 5 December 2014 in Paris, co-hosted by the French Institut des Avocats Conseils Fiscaux (IACF). The conference consisted of three panels, each dealing with one topical aspect of tax transparency: country by country reporting of tax information, initiatives to introduce mandatory disclosure of tax avoidance schemes and cooperative compliance models, namely the "relation de confiance" pilot project of the French tax administration. The presentations of the speakers are available on the CFE website

READ MORE *(click to open):*

- Presentations: **EN**

IMPRESSUM

CONFEDERATION FISCALE EUROPEENNE

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