



## CFE EVENTS

### Save the date: 8th CFE PAC Conference: „Big Data - a threat to taxpayer rights?“

New initiatives to increase transparency in taxation, such as exchange of bank account and other financial information, country by country reporting in annual reports and transfer pricing, mandatory tax planning disclosure and exchange of tax rulings, will give tax administration increased access to taxpayers' data and provide tools for risk assessment, targeting tax audits and countering tax avoidance. These initiatives may touch on the taxpayer's rights to privacy, effective representation in tax matters and legal certainty. At the same time, there is a revived interest in the protection of the taxpayer's rights: · The European Commission, after discussions with stakeholders and member states, is currently considering the publication of a "European Taxpayers' Code". · In parallel, CFE, together with AOTCA, the Asia-Oceania Tax Consultants' Association, and STEP, the Society of Trust and Estate Practitioners, presented a draft Model Charter of rights and responsibilities of taxpayers. After consultation with the OECD and other stakeholders, a final version of the Model Taxpayer Charter is due to be published in 2015. · Lastly, the International Fiscal Association (IFA), in 2015, published a country benchmark identifying minimum standards and best practices in the protection of taxpayer rights. Traditionally, the protection of taxpayers' rights is the role of the tax adviser. The conference will ask whether this concept requires adaptation in a digital world based on fair competition, transparency and information exchange. It will also seek to answer how transparency-enhancing measures can benefit the taxpayer, by increasing availability of information and legal certainty. Invited speakers will include the European Commission, the OECD, national tax administrations and tax practitioners.

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

- 8th PAC Conference website: [EN](#)

## DIRECT TAX

### Commission publishes Action Plan on corporate taxation / Mandatory CCCTB proposal in 2016

On 17 June 2015, the European Commission published an "Action Plan for fair and efficient corporate taxation in the EU", outlining a number of intended measures for the coming years. These are:- a relaunch of the proposal for a CCCTB (common consolidated corporate tax base) Directive in 2016;- more concrete and EU-specific guidance on implementing the OECD Transfer Pricing Guidelines;- if the "modified nexus approach" linking beneficial IP regimes (like "patent boxes") to actual research and development activities is not implemented consistently by member states within 12 months, a legislative proposal on this issue;- improving double taxation dispute resolution by amending the existing Arbitration Convention;- coordination of joint tax audits by member states, and- a renewed mandate for the Code of Conduct group. As to the new CCCTB, the Commission is now considering a mandatory tax base for "multinational companies" without indicating a size threshold. The new CCCTB should be adopted in a two-step approach: The first step would mainly deal with harmonisation of the tax base. This will include work on the following (BEPS and other anti-avoidance) elements:- permanent establishments- CFC (controlled foreign companies) rules- review of the beneficial treatment of research & development activities- reducing corporate debt bias, i.e. the more favourable tax treatment of debt over equity. Only in a second step, the Commission is planning to allow consolidation and apportionment of the tax revenue between member states, as this has proven to be the most difficult element in Council negotiations. Nevertheless, the Commission intends to propose allowing temporary cross-border loss offset. Losses could be offset against profits in another member state but would "return" to the loss-making entity once it has become profit-making again. Until the new proposal is presented, work in the Council on the current CCCTB will continue in order to reach as much progress as possible before the new proposal is made. The Commission stresses that harmonisation of tax rates is not envisaged. In the same context, the Commission opened a public consultation on further corporate tax transparency, published a list of tax havens and renewed the mandate of the Platform for Tax Good Governance (see separate articles in this Report).

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

- Communication COM(2015)302: "5 Key areas for action" [EN/DE/FR](#)
- Main press release: [EN](#) (All EU languages) -
- Questions and Answers: Action Plan for fair and efficient corporate taxation: [EN](#) (FR,DE available)
- Questions and Answers: CCCTB re-launch: [EN](#)
- Staff working document SWD(2015)121 of 17 June 2015: [EN/DE/FR](#)

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

- Press release: [EN](#) (FR, DE, NL available)

### **CJEU accepts non-deductibility of currency losses from holdings in another member state**

On 10 June 2015, the EU Court of Justice (CJEU) decided in the Swedish preliminary ruling case C-686/13, X AB, that Swedish legislation does not have to provide for the possibility of a resident undertaking to deduct from its income tax base a currency loss inherent in a capital loss on its holdings for business purposes in a company resident in another member state, if by the same token, gains from such holdings, in Sweden or another member state, are not included in the tax base either. The judgment confirms the opinion of Advocate-General Juliane Kokott.

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

- Judgment: [EN](#) (all EU languages)
- Opinion by Advocate General Kokott, [DE](#) (available in most EU languages, not EN)

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

- July infringement package: [EN](#) (FR, DE, ES, NL, IT, PT, EL, LT, MT, RO available)

### **Commission refers Belgium to Court over tax treatment of investment in property abroad**

On 18 June 2015, the European Commission has decided to refer Belgium to the EU Court of Justice (CJEU) because of the different methods in Belgian tax law of assessing income from property located abroad and in Belgium. Income from property abroad is assessed at a higher value than that from comparable property in Belgium, thus favouring investments in certain properties in Belgium over similar property in other EU or EEA member state.

### **Commission asks Belgium to amend its rules on tax benefits linked to personal or family situation**

On 16 July 2015, the European Commission decided to send a reasoned opinion to Belgium, asking the country to treat equally income received from Belgium and from other EU or EEA member states with regard to tax benefits linked to the personal or family situation. Belgian law provides for such tax benefits on income received in Belgium. For income originating in another state, Belgium applies a rate corresponding to the percentage of the taxpayer's total income that is accounted for by domestic income. An additional tax reduction is granted if the taxpayer's personal or family situation has not been taken into account by the tax authorities of other countries. However, no such additional reduction is granted if the state in which the income originates offers the taxpayer the option of receiving these benefits in that state, even if the taxpayer has not exercised this option. The Belgian authorities have two months to notify the Commission of the measures they intend to take. In the absence of such notification, the Commission may refer Belgium to the CJEU.

### **CJEU : France may not make equal treatment of donations or bequests to public bodies or charitable organisations in another member state conditional on bilateral agreement**

On 16 July 2015, the CJEU decided in case C-485/14, Commission v. France, that France, when relieving donations and bequests to public bodies or charitable organisations from gift tax, may not impose the condition that these organisations be established in France or in an EU or EEA member state that has concluded a bilateral agreement with France, as such condition violates the free movement of capital.

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

- Judgment : [FR](#)

**OECD consults on transfer pricing of hard-to-value intangibles (BEPS Action 8)**

On 4 June 2015, the OECD opened a public consultation on its new discussion draft on transfer pricing rules or special measures for hard-to-value intangibles, as part of its BEPS Action Plan (Action 8). The discussion draft proposes some revisions of the BEPS Report "Guidance on Transfer Pricing Aspects of Intangibles" of September 2014. The consultation was open until 18 June 2015

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

- Discussion draft: [EN](#)
- Press release, 4 June 2015: [EN](#) / [FR](#)
- Guidance on Transfer Pricing Aspects of Intangibles, September 2014 : [EN](#) / [FR](#)
- Public comments received: [EN](#)

**CFE comments on revised OECD Discussion Drafts on PE status and treaty abuse**

On 12 and 17 June 2015, the CFE commented on two revised discussion drafts on preventing the artificial avoidance of Permanent Establishment status (BEPS Action 7) and preventing tax treaty abuse (BEPS Action 6), issued by the OECD in response to comments received by stakeholders in prior consultations. Both Opinion Statements generally welcome the OECD amendments but indicate areas where further improvement is possible. The comments were prepared by the CFE Fiscal Committee, in cooperation with AOTCA, the Asia-Oceania Tax Consultants' Association.

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

- CFE/AOTCA Opinion Statement 10/2015: PE status (BEPS Action 7): [EN](#)
- CFE/AOTCA Opinion Statement 11/2015: tax treaty abuse (BEPS Action 6): [EN](#)

- Public comments received on BEPS Action 7:

[EN](#)-

- Public comments received on BEPS Action 6: [EN](#)

**Council discusses two-step approach to adopting Interest & Royalties Directive**

The EU Ecofin Council, on 19 June 2015, discussed the splitting of the European Commission's proposal of 2011 for a recast of the Interest & Royalties Directive into two elements, to facilitate its adoption. This approach implies, as a first step, the adoption of an anti-abuse clause preventing the granting of the benefits of the Directive for arrangements which are not genuine, i.e. that are not put into place for valid commercial reasons which reflect economic reality. The proposed wording would provide for a minimum harmonisation, leaving member states the possibility to maintain further anti-abuse rules in place. A majority for such approach was reached but not, as required, unanimity. A number of member states support a minimum effective level of taxation to be included in the Directive.

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

- Council meeting press release : [EN](#)
- June 2015 compromise proposal : [EN](#)

**Commission refers Ireland to Court over tax on rented and leased cars**

On 16 July 2015, the European Commission decided to refer Ireland to the CJEU because it considers that the car tax applied to rented and leased vehicles is not in line with EU rules. While under EU rules, car tax should be levied according to the precise duration of the lease in another member state, provided that the duration can be determined, e.g. on the basis of a contract, Ireland is levying the full amount of car tax. Even though the amount levied in excess is refunded at a later stage, once the vehicle is registered in another country, the Commission finds that the Irish legislation creates a disproportionate obstacle to the freedom to provide services for leasing and rental companies in other member states that wish to offer their services to Irish residents. The Commission is currently conducting a number of infringement cases against several member states concerning car registration taxes.

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

- Press release: [EN](#) (DE, FR available)

## INDIRECT TAX

### CJEU limits UK VAT reduction on energy-saving materials

On 4 June 2015, the CJEU decided in the infringement case C-161/14 against the UK that the country could not apply a reduced VAT rate to supplies of energy-saving materials and their installation in residential accommodation if there is no social policy purpose, they don't concern private dwellings or the materials supplied account for a significant part of the value of the services.

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

- Press release (no.65/2015): [EN](#) / [ES](#) / [CS](#) / [DE](#) / [FR](#) / [IT](#) / [PT](#) / [SK](#)  
- Judgment: [EN](#) (FR available)

### CJEU: No VAT exemption for transportation by a third party of human organs and samples for medical analysis or care

On 2 July 2015, the CJEU decided in the Belgian preliminary ruling case De Fruytier, C-334/14, that the transportation, for clinics and laboratories, of human organs and samples of human origin for the purposes of medical analysis or medical or therapeutic care, by a third party who is self-employed and whose services are covered by the reimbursement made by the social security system, were not exempted from VAT.

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

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

### CJEU delivers judgment on deductibility of input VAT for holding companies and conditions for VAT grouping

On 16 July 2015, the CJEU rendered its judgment on the joined cases C-108 and 109/14, Larentia + Minerva and Marenave, responding to a request for a preliminary ruling from the German Federal Fiscal Court. The Court explains that the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity, must be regarded as belonging to its general expenditure and the VAT paid on that expenditure must, in principle, be deducted in full, unless certain output economic transactions are VAT-exempt. However, where the holding company is involved in the management only of some of those subsidiaries and does not carry out an economic activity as regards the others, such expenditure must be regarded as only partially belonging to its general expenditure, so that the VAT paid on that expenditure may be deducted only in proportion to that which is inherent to the economic activity, according to the applicable national apportioning criteria. Member states must provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to economic and to non-economic activity. The right to form a VAT group may not be reserved to entities with legal personality and linked to the controlling company of that group in a relationship of subordination, except where appropriate and necessary to prevent abusive practices or behaviour or to combat tax evasion or tax avoidance.

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

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

### CJEU rules on VAT treatment of the sale of built-up land partially belonging to the seller's private assets

On 9 July 2015, the CJEU decided in the Slovenian preliminary ruling case C-331/14, Trgovina Prizma, that, where a taxable person has acquired plots of land, some of which have been assigned to his private assets and others to his business and where he has built, in his capacity as a taxable person, upon all of those plots of land, a shopping centre which was then sold together with the land on which the building was erected, the sale of the plots of land which were assigned to that person's private assets must be subject to VAT.



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

- Judgment: **EN** (all EU languages)

### VAT: CJEU decides on classification of a leasing of immovable property as an acquisition

On 2 July 2015, the CJEU decided in the Slovenian preliminary ruling case *NLB Leasing*, C-209/14, that where an immovable property lease agreement provides either that ownership of that property is to be transferred to the lessee on the expiry of that agreement or that all the essential powers attaching to ownership of that property are to be enjoyed by the lessee and, in particular, substantially all the rewards and risks incidental to legal ownership of that property are transferred to the lessee and the present value of the amount of the lease payments is practically identical to the market value of the property, the transaction resulting from that agreement must be treated as an acquisition of capital goods. As the Court further explains, a taxable person may not reduce the taxable amount where that person has in fact received all the payments in consideration for the service which he supplied or where, without the agreement having been refused or cancelled, the recipient of that service is no longer liable to the taxable person for the agreed price. The leasing of immovable property and the sale of that property to a person who is a third party to the lease agreement may be taxed separately for VAT purposes where those transactions cannot be regarded as forming a single supply.

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

- Judgment: **EN** (all EU languages)

### CJEU rules on right to VAT deduction of an operator who should have been registered and on legitimate expectations

In its judgment rendered on 9 July 2015, the CJEU decided in the Romanian preliminary ruling case *C-183/14, Salomie and Oltean*, that the principles of legal certainty and protection of legitimate expectations do not preclude a national tax authority from deciding, following a tax audit, to subject transactions to VAT and to impose surcharges, provided that that decision is based on clear and precise rules and that the authority has not given rise to a reasonable ex-

pectation that that tax would not be levied on such transactions. A taxpayer may not be refused the right to deduct input VAT on goods and services in the context of taxed transactions for the sole reason that he was not identified for VAT purposes when he carried out those transactions, but must nevertheless pay the tax that he ought to have paid.

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

- Judgment : **EN** (all EU languages)

### Advocate-General: Company set up by public body should be subject to normal VAT rules

On 25 June 2015, CJEU Advocate-General Jääskinen delivered his opinion in the Portuguese preliminary ruling case *C-174/14, Saudaçor* on the VAT treatment of a company set up and owned by the Azores Autonomous Region and rendering to that Region advisory services on health system matters. The (non-binding) opinion finds that the sums paid to the company by the Azores Region were consideration for supplies, and the company could not be considered a public body and should therefore be within the scope of VAT rules.

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

- Opinion of Advocate-General Jääskinen: **Several languages**, not EN

### Advocate-General: No VAT on trading of Bitcoins

On 16 July 2015, CJEU Advocate-General Kokott delivered her opinion in the Swedish preliminary ruling case *David Hedqvist*, C-264/14, on the VAT treatment of exchanging Bitcoins into a traditional, legal currency. According to the Advocate-General, the exchange of a pure form of payment (the Bitcoin) for a legal means of payment or vice versa is a supply of a service for consideration that is VAT-exempt. Advocate-General opinions are not binding for the CJEU judges.

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

- Opinion: **DE** (available in many EU languages, not EN)
- Referred question: **EN** (all EU languages)

**CJEU rules on concept of “independent small brewery” in Excise Duty Directive**

On 4 June 2015, the CJEU decided in the French preliminary ruling case Brasserie Bouquet, C 285/14, that a brewery which makes its beer in accordance with an agreement pursuant to which it is authorised to use the trade marks and production process of a third party is not an “independent small brewery” in the sense of the Directive on excise duties on alcoholic beverages, and thus cannot benefit from reduced excise duty rates.

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

- Judgment: **EN** (all EU languages)

**CJEU rules on VAT taxable amount for gas distribution services**

On 11 June 2015, the CJEU delivered its judgment in the Portuguese preliminary ruling case C-256/14, Lisboaagás. According to the Court, the amount of taxes paid by a gas distributor to municipalities for the use of publicly-owned property, which is passed on to another company responsible for marketing the gas, and then on to the final consumers, must be included in the VAT taxable amount applicable to the supply of services by the gas distributor to the gas marketing company

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

- Judgment: **EN** (all EU languages)

**CJEU decides on VAT treatment on second hand car breakdown insurances**

On 16 July 2015, the CJEU decided in the French preliminary ruling case Mapfre, C-584/13, that the supply of services whereby an economic operator which is independent of a second-hand motor-vehicle dealer provides, in return for payment of a lump sum, a warranty covering mechanical breakdowns which may affect certain parts of that vehicle constitutes an exempt insurance transaction. The provision of such a supply and the sale of the second-hand vehicle must, in principle, be considered to be distinct and independent supplies, to be treated separately from a VAT point of view.

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

- Judgment: **EN** (all EU languages)
- Opinion of Advocate-General Szpunar: **EN** (all EU languages)

**VAT: Commission publishes study on intra-EU 2B2 supply of goods**

On 13 July 2015, the Commission published a 230-page study analysing five policy options for the implementation of a destination-based VAT system across the EU, focusing on the additional compliance costs of businesses that trade cross-border and on VAT fraud.

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

- Study: **EN**

**Council extends Polish VAT derogation for taxable persons with a turnover ≤ € 30,000**

The EU Council, on 14 July 2015, extended a derogation allowing Poland to exempt from VAT taxable persons whose annual turnover is no higher than € 30,000. The extension will apply until 31 December 2018.

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

- Council press release, p.10: [EN](#)

### **Council accepts Italian requirement to pay VAT on supplies to public authorities to a separate blocked bank account**

On 14 July 2015, the EU Council authorised Italy to require VAT on supplies of goods and services to public authorities to be paid to a separate and blocked bank account instead of being paid to the supplier. This is aimed at stopping substantial fraud detected in this area. Since public authorities are in principle not taxable persons, the application of the so-called 'reverse charge' mechanism is not possible. The decision will apply from 1 January 2015 to 31 December 2017.

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

- Council press release, p.11: [EN](#)

### **Council allows Denmark simplified VAT rule for small lorries and reduced rate on shore-side electricity for shipst**

On 19 June 2015, the EU Council authorised Denmark to introduce a flat-rate scheme for the private use of light goods vehicles with a maximum authorised weight of three tonnes which have been registered solely for business use. The measure will not apply where the private use exceeds 20 days per calendar year. The scheme is aimed at simplifying VAT collection and combat tax evasion. The decision will apply until 31 December 2017. On the same day, Denmark was granted for six years the application of a reduced VAT rate on electricity directly supplied to commercial vessels berthed in ports. This is to reduce air pollution in port cities.

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

- Council Press release, p.18-19: [EN](#)

### **CFE confirmed as EU VAT Forum member until September 2018**

The European Commission has accepted the CFE as a member of the EU VAT Forum for the Forum's second three-year term starting on 1 October 2015. The EU VAT Forum is a group of 15 organisations representing businesses and tax practitioners that meets with EU member states, moderated by the European Commission, to look for practical solutions to problems in the administration of the current VAT system, dealing e.g. with fraud and ways to improve the use of IT. The CFE representatives will remain Ian Hayes (UK) and Christian Amand (Belgium).

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

- EU VAT Forum on European Commission website: [EN](#) (DE/FR available)  
- List of members 2015-2018: [EN](#)

## **OTHER TAX POLICY**

### **HMRC consults on sanctions for tax avoidance**

On 22 July 2015, the UK tax administration HMRC has opened a public consultation on imposing sanctions on "serial avoiders" of tax and "serial promoters" of tax avoidance schemes, in case these schemes are defeated by HMRC. A defeated scheme would trigger a warning period during which the taxpayer is under increased scrutiny and reporting obligations. Repeated use by a taxpayer of schemes that are defeated would result in surcharges, refusal of certain reliefs and public naming. Promoters too would become subject to a monitoring period resulting in a conduct notice in cases of repeated promotion or implementation of such schemes. The document also includes the government's response to a previous consultation on the same topic.

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

- Consultation document , 22 July 2015: [EN](#)

## Latvian Council presidency report on tax issues

On 19 June 2015, the EU Council authorised Denmark to introduce a flat-rate scheme for the private use of light goods vehicles with a maximum authorised weight of three tonnes which have been registered solely for business use. The measure will not apply where the private use exceeds 20 days per calendar year. The scheme is aimed at simplifying VAT collection and combat tax evasion. The decision will apply until 31 December 2017. On the same day, Denmark was granted for six years the application of a reduced VAT rate on electricity directly supplied to commercial vessels berthed in ports. This is to reduce air pollution in port cities.

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

- Short report in the framework of the Euro Plus Pact (5 pages): [EN](#)
- Detailed Report (29 pages): [EN](#)

## Commission extends Platform for Tax Good Governance mandate

The European Commission has published a decision of 17 June 2015, extending the mandate of its advisory Platform for Tax Good Governance, Aggressive Tax Planning and Double Taxation until June 2019. The Platform in which CFE is present was initially set up in June 2013. It includes member states and 15 organisations representing business, tax professionals, academia and NGOs. The composition of the group will remain unchanged until April 2016 when a new call for applications will be launched. The scope of the group has been widened to include the upcoming CCCTB proposal, measures against non-cooperative jurisdictions, information exchange and publication of tax rulings, country by country publication of tax information, arbitration to solve double taxation and better coordination of tax audits.

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

- Decision establishing the Platform 2015-2019: [EN/DE/FR](#)
- Information on the Platform on the European Commission's website: [EN](#) (DE, FR available)

## UN development conference fails to set up UN tax body – Competences of Tax Committee widened

On 16 July 2015, the UN member states concluded their 3rd International Conference on Financing for Development in Addis Ababa, Ethiopia. Reportedly, a number of developed countries blocked the setting up of global tax body, leaving the OECD as main tax player in the international arena. This is a disappointment for many developing countries which see the OECD's policies driven by the interest of its members, developed and emerging economies, despite the OECD's efforts to consult developing countries in BEPS and other projects. The compromise reached calls for the strengthening of the competences of the UN Committee of Experts on International Cooperation in Tax Matters to improve its effectiveness and operational capacity. The CFE has observer status with that Committee and regularly attends its meetings. The OECD, together with the United Nations Development Programme, launched the "Tax Inspectors Without Borders" initiative to help the tax administrations of developing countries benefit from the expertise of skilled tax inspectors from developed and emerging economies.

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

- UN Press release: [EN](#)
- OECD press release: [EN](#)
- UNDP/OECD "tax inspectors without borders" initiative, press release: [EN](#)
- OECD tax side events: [EN](#)

## German government prepared to accept Eurozone tax?

On 25 July 2015, the German weekly magazine Der Spiegel reported that German Finance Minister Wolfgang Schäuble is open towards the idea of a Eurozone budget which could be funded by VAT revenues or by a surcharge on other taxes, raised by a Euro Finance Minister. These considerations are based on the "Five Presidents' Reports" by European Commission President Jean-Claude Juncker, Euro Summit President Donald Tusk, Eurogroup President Jeroen Dijsselbloem, the European Central Bank President Mario Draghi and European Parliament President Martin Schulz, presented on 22 June 2015. The paper foresees the introduction of a Eurozone treasury. The Eurozone reforms should be completed by 2025.



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

- Five Presidents' Report, 22 June: [EN](#) (all EU languages)
- Spiegel Online article, 25 July : [DE](#)
- Reuters article, 25 July: [EN](#)

**Tax topics on Luxembourg Council presidency agenda**

On 1 July 2015, Luxembourg presented its work programme for its EU Council presidency and the draft agendas for the Ecofin meetings in the second half of 2015. The programme specifically mentions the OECD's BEPS recommendations (expected this September) which would guide EU action in this field, so as to achieve a coherent approach to the taxation of multinationals, in and beyond the EU. Emphasis is also put on the preservation of the internal market acquis in the implementation of BEPS, in particular the free movement of capital and the right of establishment. The draft Ecofin programme hopes for political agreement on the mandatory exchange of information on tax rulings and on the Interest & Royalties Directive at its meeting on 6 October.

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

- Luxembourg presidency Ecofin work programme: [EN](#)

**ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD****Commission's tax havens "black list" faces OECD criticism**

On 17 June 2015, the Commission published a list of 30 non-EU jurisdictions which figure on black lists of more than 10 EU member states as non-cooperative jurisdictions, according to those member states' criteria. The Commission is planning to regularly update this list. However, the member states' blacklisting processes differ greatly in the criteria used and most member states do not provide for periodic updates of their black lists. In its Platform for Tax Good Governance, the Commission has tried, since 2013, to reach agreement among EU countries on a common set of criteria and blacklisting methodology, without

success to date. The list was criticised by the OECD and others for creating the impression of a common EU blacklist and for relying on partially outdated information which does not take due account of the progress achieved by the OECD Global Forum. Indeed at least one of the listed countries would not have appeared on an up-to-date list. In reaction, in mid-July, the Commission started work on an update, asking the member states to report, at short notice, any recent changes in national blacklists. The Commission will consider coordinated counter measures towards non-cooperative tax jurisdictions in the more distant future.

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

- Tax havens map, 17 June 2015: [EN](#)
- Platform for Tax Good Governance Discussion Paper listing the outcomes of the Commission's 2014 survey on tax havens, February 2015: [EN](#)
- OECD letter of 19 June 2015 to Global Forum members: [EN](#)

**STATE AID****Commission requests individual tax rulings from 15 member states**

On 8 June 2015, the European Commission ordered 15 EU member states to submit a substantial number of individual tax rulings at which the Commission intends to have a closer look to assess whether they respect EU state aid rules. Reportedly, this group includes, among others, Austria, France, Germany, Italy and Spain. This request is based on the information the Commission has received from the 26 member states which responded to its request of December 2014 to submit general information on their tax rulings practices. Estonia and Poland have not yet complied with that request. The Commission ordered these two countries yesterday to submit the missing information within one month.

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

- Press release: [EN](#) (FR, DE, ET, PL available)

## Belgian “excess profits tax” rulings: Commission publishes letter

The European Commission has released a non-confidential version of its letter sent to the Belgian government on 3 February 2015 ([see CFE European Tax & Professional Law Report February 2015](#)), announcing the opening of in-depth state aid investigations into the Belgian “excess profit tax” rulings practice which, according to the Commission, may have favoured foreign over domestic companies in violation of EU state aid rules, enabling 47 undertakings to exclude up to 87% of their Belgian profits from tax.

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

- Non-confidential version of the letter, [EN](#) (all EU languages)
- Case on Commission’s state aid website: [EN](#)
- Press release of 3 February 2015: [EN](#) (DE,FR,NL available)

a selective advantage over their competitors, in breach of EU state aid rules. The progressive rates have the effect of strongly disadvantaging large foreign companies investing in Hungary. As the Commission explains, the Hungarian food chain inspection fees are unrelated to the actual cost of such inspections, and there is no apparent reason why a health tax should be proportionally higher for large producers. The Commission has also issued injunctions, prohibiting Hungary from applying the progressive rates of the food chain inspection fee and the tobacco tax until the Commission has concluded its assessment. In March 2015, the Commission already started investigations into a similar Hungarian tax regime for advertising services (see [CFE European Tax & Professional Law Report March 2015](#)). In February 2014, the CJEU already decided in a Hungarian case that a retail tax with steep rates that depend on the aggregate turnover of a group, can disadvantage companies from other member states and may thus be incompatible with EU law ([CFE CFE European Tax & Professional Law Report February 2014](#)).

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

- Press release: [EN](#) (DE,FR available)

## Commission orders France to recover €1.37 billion in aid from EDF

On 22 July 2015, the European Commission decided that Électricité de France (EDF), has been granted tax breaks incompatible with EU state aid rules. As EDF was awarded the high-voltage transmission network in France as a concession, between 1987 and 1996, it made accounting provisions with a view to renewing the network. In 1997, when EDF’s balance sheet was restructured, the French authorities reclassified some of these provisions as a capital injection without levying corporation tax

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

- Press release: [EN](#) (DE,FR available)

## CUSTOMS

### World Customs Organization publishes guide to customs valuation and transfer pricing

On 24 June 2015, the World Customs Organization published a Guide to Customs Valuation and Transfer Pricing, exploring the methodology and the linkages between both regimes: In international transactions within a multinational group, tax administrations are aiming to ensure the conditions are consistent with the ‘arm’s length principle’ for profit tax purposes. Customs are examining the same transactions to ensure that the price for transactions of imported goods is not influenced by the relationship between buyer and seller. The report outlines possibilities for customs to use transfer pricing information to examine related party transactions.

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

- WCO press release: [EN](#), [FR](#)
- WCO Guide: [EN](#)

## Commission investigates into Hungary’s food chain inspection fee and tax on tobacco sales

On 15 July 2015, the European Commission opened two separate in-depth investigations to further examine whether two recent Hungarian measures with steeply progressive rate structures are in line with EU state aid rules. The Commission has concerns in both cases that the progressivity of the rates based on turnover provides companies with a low turnover

## ACCOUNTING

### Commission reports on application of IFRS in the EU

On 18 June 2015, the European Commission adopted a report on the application of International Financial Reporting Standards (IFRS) in the EU. IFRS have been mandatory for consolidated financial statements of listed companies in the EU since 2005, to improve the efficiency of EU capital markets by increasing the transparency and comparability of financial statements. IFRS are developed by a private organisation (the IFRS Foundation) and require endorsement by the European Commission to become EU law. Noting broad acceptance among most businesses and stakeholders with the IFRS, the report identifies room for improvement in the collaboration between parties involved in the endorsement process to improve timeliness and to allow for better alignment with other EU law. Procedures could also be simplified in order to reduce their complexity for companies. The Commission already carried out a public on the use of IFRS in autumn 2014 ([CFE European Tax & Professional Law Report August/September 2014](#)).

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

- Press release: [EN](#)
- Report: [All EU languages](#) (except for CZ and HU)
- Staff working paper: [EN](#)

is currently carrying out with 15 EU member states in the area of VAT. Moreover, the Opinion Statement contains information on the practice of publication of tax rulings in 16 European countries. The statement has been prepared by the CFE Fiscal Committee.

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

- CFE Opinion Statement FC 9/2015 on mandatory exchange of information on tax rulings: [EN](#)

### Commission launches public consultation on corporate tax transparency

Part of the European Commission's Action Plan on Corporate Taxation of 17 June 2015 (see article in this Report) is a public online consultation on whether and how corporate tax transparency should be enhanced through mandatory country by country reporting of tax information. Aspects addressed are the types of companies (size thresholds and geographical limitations) concerned, the kind of information to be reported, publication of this information, anonymity of published data and potential harm from publication of sensitive business information. The questionnaire also addresses reporting requirements for tax advisers, as specifically addressed by the OECD (BEPS Action 12). The deadline is 9 September 2015.

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

- Public consultation on further corporate tax transparency: [EN](#)

## TAX TRANSPARENCY

### CFE comments on mandatory exchange of information on cross-border tax rulings and APAs

On 12 June 2015, the CFE has commented on the European Commission's proposal of 18 March 2015 to amend the Directive 2011/16/EU on Administrative Cooperation, introducing mandatory exchange of a pre-defined set of information on cross-border tax rulings and advance pricing agreements (APAs) among tax administrations, including also the Commission. Apart from comments on the scope and technicalities of the planned exchange, the CFE Opinion Statement suggest measures that would increase legal certainty also for taxpayers, in particular the initiation of a cross-border rulings pilot project in corporate income taxes, similar to the pilot project that the Commission

### EP votes in favour of country by country publication of tax information

On 8 July 2015, the plenary of the European Parliament voted in favour of an amendment to the EU Accounting Directive introducing an obligation of large and public interest companies to publish on an annual basis, country by country, the profits or losses made and the taxes paid on these; furthermore, large companies should publish a predefined set of "essential elements of and information regarding tax rulings". This information would also be subject to statutory audit. The changes were not yet formally adopted, as the EP will first seek to reach a compromise with the EU Council. The European Commission is currently consulting on corporate country by country tax reporting (see article in this Report).

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

- Text adopted: [EN](#) (all EU languages)

## OECD presents country by country reporting implementation package

On 8 June 2015, the OECD presented its implementation package for its country by country reporting standard (BEPS Action 13) in transfer pricing, issued in September 2014. If implemented into national law, the reporting standard will require multinational enterprises to provide aggregate information annually, in each jurisdiction where they do business, relating to the global allocation of income and taxes paid, together with other indicators of the location of economic activity within their group, as well as information about which entities do business in a particular jurisdiction and the business activities each entity engages in. The new implementation package consists of model legislation requiring the ultimate parent entity of a multinational group to file the country-by-country report in its jurisdiction of residence, including back-up filing requirements when that jurisdiction does not require filing. The package also contains three Model Competent Authority Agreements to facilitate the exchange of country-by-country reports among tax administrations. Reporting by companies to tax administrations should start in 2016 and the government-to-government information exchange in 2017.

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

- Implementation package: [EN](#)
- Press release, 8 June 2015: [EN](#) (FR available)
- Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting Proposals, February 2015: [EN](#) / [FR](#) / [DE](#) / [ES](#)
- Guidance on Transfer Pricing Documentation and Country-by-Country Reporting, September 2014: [EN](#)

## BUSINESS SUPPORT

### On-line portal to support business in Ukraine

The Ukrainian Union of Tax Advisers, member organisation of CFE since 2013, has set up a web portal offering comprehensive information for foreigners on opening and conducting a business in Ukraine, presented in a user-friendly way in English and Polish language. The creators of the website commit to finding qualified professionals to deal with questions or problems businesses may have.

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

- Foreigners in Ukraine portal: [EN](#), [PL](#)

## EVENTS

### Commission workshop on the ‘Political economy of tax reforms’

On 19 October 2015, the European Commission’s Directorate-General for Economic and Financial Affairs (ECFIN) will host a workshop dealing with the political implications and resistance to tax reforms. Registration will be possible as of 20 August 2015. Participation to past ECFIN workshops has been free of charge.

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

- Information and registration: [EN](#)
- Programme: [EN](#)



## CROSS-BORDER TAX ADVICE

### Commission opens infringement proceeding against Germany over binding fees for tax services

On 18 June 2015, the European Commission decided to open an infringement proceeding against Germany over the German fee regulation for tax advisers. German law provides for a minimum and a maximum fee for specific activities reserved to tax advisers and other professions that may give tax advice. Advisers and clients may however agree in writing on fees exceeding the maximum fees, and exceptionally, the tax adviser can be obliged to charge less than the minimum fee. Moreover, there is an overall minimum fee of € 10. Infringement procedures against restrictions to professional services have also been launched against Austria, Cyprus, Malta, Poland and Spain. They refer to requirements related to shareholding, voting rights or legal seat, restrictions to multidisciplinary activities and activities deemed incompatible, the latter concerns lawyers and litigation agents (procuradores) in Spain. The above-mentioned member states received a Letter of Formal Notice, which is the first of three steps in an infringement procedure and constitutes an official request for information. They have two months to respond.

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

- Press release: [EN](#) / [FR](#) / [DE](#) / [ES](#) / [EL](#) / [MT](#) / [PL](#) available)

### Upcoming Advocate-General opinion on applicability of national professional laws on tax firms providing services using distance communication

The opinion of CJEU Advocate-General Cruz Villalon in the German preliminary ruling case C-342/14, X-Steuerberatungsgesellschaft, is expected on 2 September 2015. The CJEU was asked to decide whether the requirement in German law that a tax firm needs prior authorisation to provide tax services in Germany, and the conditions for obtaining such authorisation (e.g. rules on qualification or ownership), apply on a tax firm from another member state that prepares tax returns for a German client but operates from the territory of another member state and sends these returns to a German tax authority. In other words: to what extent national tax professional rules apply to tax advisers who provide services without physically entering that country (see also [CFE European Tax & Professional Law Report September 2014](#)).

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

- Case C-342/14 on CJEU website: [EN](#)  
- Reference for a preliminary ruling : [DE](#)

## PROFESSIONAL LAW

### EP Committee draft report demands EU rules for tax advisers advising governments

On 20 July 2015, MEPs Elisa Ferreira (Social Democrats, Portugal) and Michael Theurer (Liberals, Germany) from the European Parliament's Special Committee on Tax Rulings and other Measures similar in Nature or Effect (TAXE) presented the Committee's draft report, ahead of schedule. The extensive text is a synopsis of all tax policy topics currently discussed. The rapporteurs are concerned about possible conflicts of interest where tax firms advise both the government and private clients and call for the development of an EU incompatibility regime. They also invite the Commission to consider sanctions on firms which engage in aggressive tax planning by refusing them EU funding and advisory roles in EU institutions. On tax policy, the draft report essentially recommends:- Cross-border tax rulings should be established jointly with all countries involved. Information exchange should be exchanged on all, not only cross-border, rulings, and the Commission should consider public disclosure of rulings, respecting confidentiality.- The introduction of a mandatory CCCTB with consolidation in a second step, as announced by the Commission on 17 June. The legislative proposal should clarify the tax treatment of research & development, provide for definitions of permanent establishment and economic substance, and contain minimum and maximum effective tax rates.-The current reform of the state aid framework should provide further clarification on state-aid through tax measures.- The Code of Conduct Group on Business Taxation should be reformed and the Arbitration Convention should be reshaped and made more efficient.- A set of country by country tax information should have to be published and further information should be reported to and exchanged between tax administrations.- Whistleblowers in situations such as "LuxLeaks" should be protected.- For blacklisting and possible measures against tax havens, a genuine EU benchmark containing transparency, fair tax competition and effective taxation criteria, should be developed. The (non-legislative) report will conclude the work of the TAXE Special Committee. On 7 July, the European Parliament had extended the mandate

of TAXE until the end of November 2015. The TAXE vote is scheduled for 15 October, the EP's plenary vote for 24 November 2015. The Committee has faced delays in its work due to an alleged lack of willingness of multinationals to cooperate with the Committee.

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

- Draft report : [EN](#) (other language versions will probably be added over the next weeks)
- TAXE Committee website: [EN](#)
- CFE replies to questions by TAXE members at the hearing of 16 April 2015: [EN](#)

## IMPRESSUM



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