



## CFE's Tax Top 5

Key tax news of the week



7 September 2015

### 1. CJEU prohibits different tax treatment of dividends received by a parent company depending on where the subsidiaries are established

On 2 September 2015, the EU Court of Justice (CJEU) decided in the French preliminary ruling case C-386/14, Steria, that a differentiated taxation of dividends received by the parent company of a tax-integrated group depending on where the subsidiaries are established violates the freedom of establishment.

Under French tax law, a tax-integrated parent company is entitled to neutralisation as regards the add-back of a proportion of costs and expenses, while such neutralisation is refused where dividends originate from subsidiaries from another member state, which, had they been resident, would have been eligible for group taxation.

- Press release: [EN](#) [ES](#) [DE](#) [FR](#) [IT](#) [NL](#) [PT](#)
- Judgment: [EN](#) (all EU languages)
- Opinion of Advocate-General Kokott : [EN](#) (all EU languages)

### 2. CJEU decides on retroactivity in the application of compound interest on a state aid recovery claim

On 3 September 2015, the CJEU delivered its judgment in the Italian preliminary ruling case A2A, C-89/14, concerning the application of compound interest on a state aid recovery claim relating to aids granted before EU law provided that compound interest has to be charged on such claims.

In 2002, the European Commission had decided that several Italian undertakings held mainly by public entities providing public services had received a tax advantage incompatible with EU state aid rules through exemptions from corporation tax and subsidised loans. Italy was ordered to claim back these advantages. At that time, there was no rule in EU law on whether compound interest had to be charged on state aid recovery claims. Such EU rule came into effect only in 2004. Italy only reclaimed the aid in 2009, charging interest and compound interest on the amounts.

The CJEU had to decide whether the charging of compound interest was retroactive application of the law in contradiction to the principles of EU law, which the CJEU denied, arguing that there was no retroactivity as the recovery claim was only made when the EU and national provision allowing for the charging of compound interest had long been in force.

- Press release: [EN](#) [ES](#) [DE](#) [FR](#) [IT](#) [PT](#)
- Judgment: [EN](#)
- Opinion of Advocate-General Wathelet: [EN](#) (all EU languages)

### 3. Commission publishes study on the VAT gap

On 4 September 2015, the European Commission published a study on the estimated VAT gap in 26 EU member states in 2013. The VAT gap is the difference between that amount of VAT that should have been collected and the amount actually collected. Accordingly, it is not only due to tax fraud or evasion but also

counts revenue lost to tax avoidance and insolvencies.

The study notes a slight increase from 2012 to € 168 billion of lost revenues. Missing trader fraud, according to the Commission's estimates in another study published in July 2015, accounts for EU-wide revenue losses between € 45 and 53 billion.

2013 saw few changes in VAT rates. While VAT liabilities rose by 1.2%, collected revenues rose slightly less. The gap accounts for an average of 15.2% of the total VAT theoretically collectible in all countries surveyed which is almost no change compared to 2012. The average gap of all countries is 13.9%. While the VAT gap is lowest in Finland (4%), it stands at 41% in Romania.

The study also contains calculations on the "policy gap" which is the portion of theoretically collectible VAT that is uncollected because of national policy decisions, i.e. to apply exemptions and reduced rates. While the amount "lost" to exemptions is typically higher than the amount lost to reduced rates, the study acknowledges that in some areas (e.g. financial services) the introduction of VAT would be difficult. The "actionable" policy gap, meaning the gap member states could realistically reduce by abolishing optional exemptions and reduced rates, is 13.4%. This amount is lowest in Denmark (1.8%) and highest in Spain (22.7%).

- Press release : [EN](#) (DE FR available)
- FAQs : [EN](#)
- VAT Gap Study : [EN](#)
- Destination principle study, July 2015 : [EN](#)

#### **4. CJEU decides on chargeable event and the chargeability of VAT for subscription-based consulting contracts**

On 3 September 2015, the CJEU decided in the Bulgarian preliminary ruling case C-463/14, Asparuhovo Lake Investment, that the term 'supply of services' includes subscription contracts for the supply of consulting services to an undertaking, in particular those of a legal, commercial or financial nature, under which a supplier has agreed to be available to the customer during the term of the contract. For such contracts, the chargeable event and the chargeability of the tax occur upon the expiry of the period in respect of which the payment has been agreed, irrespective of whether and how often the customer has actually made use of the supplier's services.

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

#### **5. CJEU rules on VAT exemption for the provision of goods for provisioning and fuelling vessels**

On 3 September 2015, the CJEU decided in the Lithuanian preliminary ruling case Fast Bunkering Klaipėda, C-526/13, that a VAT exemption for the provision of goods for provisioning and fuelling vessels does not apply, in principle, to supplies of these goods to intermediaries acting in their own name, even if, at the date on which the supply is made the ultimate use of the goods is known and duly established.

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

#### **6. OECD publishes study on tax treatment of SMEs**

On 5 September 2015, the OECD published a report examining the different ways of how tax systems try to support the creation and growth of SMEs in 39 different OECD and G20 countries. The report finds that in many countries, there are tax incentives for SMEs to incorporate and to distribute income in

the form of capital. Unsurprisingly, it notes that tax rules that apply to all businesses may disproportionately affect SMEs, particularly SMEs in their first years of operation or that are credit-constrained, and that tax compliance costs are proportionately higher for SMEs than for larger firms. The report also makes recommendations as to the design of tax preferences and simplifications for SMEs.

- Press release: [EN](#)
- Report (read-only): [EN](#)

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