



14 September 2015

1. CJEU: Italian statute of limitation for serious VAT fraud violates EU law

On 8 September 2015, the EU Court of Justice (CJEU) decided in the Italian preliminary ruling case Taricco, C-105/14, that a too brief limitation period for serious VAT fraud cases prevents effective and dissuasive penalties which affects the EU's financial interests. In such a case, the Italian court may be obliged not to apply the limitation system in question.

The case concerned criminal proceedings brought in Italy against persons charged with having formed and organised a criminal conspiracy in which they put in place fraudulent 'VAT carousel' arrangements. Through the use of shell companies and false documents, they are alleged to have acquired bottles of champagne VAT free, allowing a company to procure those bottles below the market price while deducting the VAT allegedly paid to the shell companies.

Some of the charges are already time-barred, whereas the other charges will be time-barred before a final judgment can be delivered, due to the complexity of the investigation and the duration of the procedure. Italian law allowed an extension of the limitation period by only a quarter of its duration, resulting in individuals suspected of committing large-scale VAT evasion enjoying de facto impunity as a result of the expiration of the limitation period.

In its judgment, the CJEU has pointed out that member states must counter illegal activities affecting the financial interests of the EU through effective deterrent measures, to the same extent as they counter tax fraud affecting their own budgets. As the EU budget is partly financed by member states' contributions calculated from their VAT assessment basis, the CJEU saw a direct link between the collection of that revenue and the financial interests of the EU. It appears that Italian law does not provide for the same statute of limitation as concerns some taxes that create revenue only for Italy's state budget. The obligation to give EU law full effect may oblige judges to disapply conflicting national laws.

The decision may also have an impact on the Council negotiations on the proposed Directive on fight against fraud to the EU's financial interests by means of criminal law. To date, the majority of member states has been in favour of excluding VAT fraud from its scope.

- Press release: [EN](#) [ES](#) [CZ](#) [DE](#) [FR](#) [IT](#) [PL](#) [PT](#) [RO](#) [SK](#) [SI](#)
- Judgment and Opinion of Advocate-General Kokott: [All EU languages](#)

2. Another (more moderate) EP draft report on tax transparency and anti avoidance policy

On 4 September 2015, the European Parliament's ECON Committee presented the draft initiative report by MEPs Anneliese Dodds (Social Democrats, UK) and Luděk Niedermayer (EPP, Czech Republic) containing recommendations to the European Commission "on bringing transparency, coordination and convergence to Corporate Tax policies in the Union". The draft report demands the Commission to come up with one or several proposals introducing an EU common corporate tax base (CCTB) and adding a consolidation element in a second step (CCCTB). The proposal should contain rules to prevent corporate base erosion and profit shifting (BEPS) such as provisions on hybrid mismatches, an EU-GAAR (general anti avoidance rule), a definition of permanent establishment or rules on the taxation of profits transferred to CFCs (controlled foreign companies) in low- or no-tax countries. The draft also asks for coordinated action to be taken against tax havens, the publication of all (cross-border and domestic) tax rulings in anonymised form,

the development of guidance on tax-related state aid, EU transfer pricing guidelines embedding the OECD principles in the EU law context, and a proposal for a voluntary “fair tax payer” label.

The draft report’s broad scope results in overlaps in content with other recent EP decisions or drafts on tax policy, namely the resolution on CBCR of 8 July, the draft ECON report on tax rulings on 14 July and draft TAXE report of 20 July 2015.

Different from the resolution of 8 July, the new draft is not clearly in favour of introducing publication of CBCR tax information for all large EU companies. The draft also relies on new studies quantifying the significance of CIT and the revenue loss due to profit shifting in a more precise way than previous studies cited by the EP and the Commission.

It also contains criticism of unilateral anti-BEPS measures such as the UK’s diverted profits tax. However, it does not support a new instrument for binding dispute resolution.

The report itself is not legally binding. If adopted, it would however indicate to the Commission which measures Parliament would be willing to support. While in taxation, the EP only has consultative powers, its approval is required for introducing CBCR in corporate reporting.

The Commission has just closed a public consultation on this issue and is currently considering a legislative response to demands for further corporate tax transparency. The CFE has taken part in this consultation.

- Procedural file (oeil – EP legislative observatory): [EN](#)
- Draft report, 4 September 2015: [EN](#)
- CFE Opinion Statement on further corporate tax transparency, 9 September 2015: [EN](#)

3. Progress in Financial Transactions Tax talks

Reportedly, there has been recent progress in EU Ecofin Council negotiations on the Financial Transactions Tax proposal that eleven EU member states are pursuing by way of enhanced cooperation. On Saturday, 12 September 2015, France and Austria mentioned “considerable progress” and an agreement on basic principles, aiming at covering as many transactions as possible at a low rate. It was said that a decisive step would be reached in October. As technical details still need to be worked out, the envisaged starting date of January 2016 is no longer realistic.

The selection of the remitted material has been prepared by Piergiorgio Valente / Filipa Correia / Rudolf Reibel

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