CFE's Tax Top 5

Key tax news of the week

2 May 2016

1. FATCA: Panama signs agreement / Competent Authority Agreement with Slovakia published

On 27 April 2016, Panama and the United States signed an intergovernmental agreement to improve international tax compliance according to the US Foreign Account Tax Compliance Act (FATCA).
FATCA represents an US initiative, calling on financial institutions around the world to provide information on the accounts of Americans abroad in order to fight tax evasion.
With the signing of this Intergovernmental Agreement (IGA), exchange of information about customers to which FATCA applies will take place between the tax administrations, but not directly between the Foreign Financial Institutions and the Internal Revenue Service of the United States.

On 26 April 2016, the US Internal Revenue Service also released the text of the competent authority arrangement signed between the US and Slovakia, following up on the signing of the US-Slovak FATCA implementation agreement of 31 July 2015.

- FATCA intergovernmental agreement US/Panama 27 April 2015: EN
- FATCA implementation agreement US/Slovakia, 26 April 2016: EN

2. European Commission takes Germany to court over infringement of VAT rules for travel agencies

On 28 April 2016, the European Commission released its April infringements' package including an announcement to bring Germany before the EU Court of Justice (CJEU) on the reason of not correctly applying the specific VAT regime for travel agencies. A previous call was sent already in 2015, but Germany did not react accordingly. The Directive requires that travel agencies must use their profit margin as the VAT tax base, irrespective of the client, in order to create fair competition conditions. This rule aims to create a level playing field for providers and to eliminate distortions of competition. So far, Germany applied this system exclusively to travel services supplied to private users. German authorities also allow travel agencies to set a single profit margin for all package travel supplied during a tax declaration period.

- Press release, 28.4.2016: EN (FR available)

3. Judgement of the Court in VAT Case *Het Oudeland Beheer*

On 27 April 2016, the CJEU delivered its judgment in the Dutch preliminary ruling case C-128/14, *Het Oudeland Beheer* on the VAT taxable amount concerning immovable property:
The Court stated that where land and a building under construction have been acquired with a right in rem allowing its holder to use the immovable property, the value of that right in rem to be taken in account in calculating the taxable amount of a supply, corresponds to the value of the amount to be paid in consideration each year for the remainder of the long lease granting the right in rem.

The value of this right and the cost of completing the building built on that land may be included in the taxable amount of a supply where the taxable person has already paid VAT on that value and that cost, but also deducted the VAT immediately and in full.

- Link to CJEU Case C-128/14: EN (all languages)

4. Commission calls on Germany to amend its VAT rules on cross-border road passenger transport

On April 28, 2016 the European Commission sent a request to Germany to amend its VAT rules on cross-border road passenger transport. Germany currently applies VAT rules that treat short cross-border passenger transport services (less than 10km) as a foreign service for tax purposes, meaning that these services are not taxable in Germany.
EU law however requires that passenger transport services must be taxed where the transport takes place and must be proportionate to the distances covered. According to the European Commission, the rule applied in Germany is not allowed under the VAT Directive and cannot be considered as a simplification measure since it is not intended to simplify the collection of the VAT, but rather not to collect VAT at all.
The Commission's request takes the form of a reasoned opinion. The Commission may refer this issue to the EU Court of Justice within two months.

- Press release: EN

5. Advocate General´s opinion on *Riskin* and *Timmermans* on tax credit in EU and third country situation

On 12 April 2016, CJEU Advocate General Kokott provided her opinion in the case *Riskin* and *Timmermans* Case C-176/15). The Court of First Instance of Liège (Belgium) had requested a preliminary ruling.
The case refers to the issue whether a member state may treat investment in companies from third countries more favourable than investment in companies from other member states.
The Advocate General concluded that the free movement of capital does not preclude national legislation which, because of an obligation arising from a double tax agreement with a third state, generally credits withholding tax withheld by a third state on dividends from companies established in that state with the advance tax levied on those dividends at national level from their resident shareholders, whereas, in the case of dividends paid by companies established in another member state, it makes that credit subject to additional conditions.

- Link to DE (other languages - not EN)

6. Commission refers Greece to ECJ over condition of reciprocity for granting preferential tax rates for bequests

On 17 February 2016, the European Commission referred Greece to the CJEU (Case C-98/16), requesting the Court to declare that, by the adoption and retention in force of legislation which provides that a preferential inheritance tax rate for bequests of which the beneficiaries are non-profit-making bodies established in other Member States of the EU/EEA is subject to a condition of reciprocity, Greece had failed to fulfil its obligations under the EU and EEA provisions on the free movement of capital.

- Link to case C-98/16: EN; all languages

7. Commission calls on France to end discriminatory treatment of dividends from non-resident subsidiaries

The European Commission sent a reasoned opinion to France on 28 April 2016, calling for compliance with a judgment of the CJEU (Case C-310/09 *Accor*) from 2011 which specified that the French law on withholding tax was against EU law, being too restrictive. The Commission maintains that the subsequent restrictive judgment of the *Conseil d´Etat,* the French Supreme Court, is not in line with EU law as it does not take into account tax paid by sub-subsidiaries in other EU countries, as tax credits were systematically limited to one third of the dividend redistributed in France by non-resident subsidiaries, and formal and disproportionate evidence-based requirements were imposed. 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 France to the CJEU.

- Press release: EN

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

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