



13 June 2016

1. CJEU decides on tax free-allowances for non-residents in German gift tax case

On 8 June 2016, the EU Court of Justice (CJEU) decided in the German preliminary ruling case C-479/14, *Hünnebeck*, that where national law provides for a certain tax-free allowance, this allowance must be granted irrespective of whether at least one of the parties is a resident, and may not require a non-resident beneficiary to make a specific request. Moreover, a member state may not calculate the gift tax of the non-resident beneficiary on the basis of aggregating all the gifts received by the beneficiary from the same person over the course of the 10 years preceding and the 10 years following that gift, if only the first 10 years are taken into account where at least one of the parties is a resident.

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

2. CJEU rules on calculation of input VAT for mixed-use services related to a building

On 9 June 2016, the CJEU decided in the German preliminary ruling case C-332/14, *Rey*, on the calculation of the deductible input VAT for goods and services used for both taxable and exempt transactions related to a building. A value-based apportionment as used by the taxpayer had not been accepted by the tax authority which considered that an apportionment based on the respective areas of the building was more accurate. The Court ruled that member states are not required to prescribe that the input goods and services used for the construction, acquisition, use, conservation or maintenance of that building must, in a first stage, be assigned to those various transactions when such assignation is difficult to carry out, so that, in a second stage, only the deduction entitlement due in respect of those goods and services used both for certain transactions for which VAT is deductible and for others in respect of which it is not is determined by applying a turnover-based allocation key or, provided that this method guarantees a more precise determination of the deductible proportion, on the basis of floor area.

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

3. CJEU decides follow-up case on non-compatible Romanian car tax

On 9 June 2016, the CJEU decided in the Romanian preliminary ruling case C-589/14, *Budişan*, that a member state may introduce a tax levied on imported second-hand motor vehicles at the time of their first registration in that state and on vehicles already registered in that state at the time of the first transfer of ownership, within that member state. In contrast, vehicles already registered in that state, for which a tax that was previously in

force but later found to be incompatible with EU law has been paid and not repaid, may not be exempted from the new tax.

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

4. State Aid: Commission publishes its letter to Luxembourg in Fiat case

On 9 June, the Commission published a non-confidential version of its decision of 21 October 2015 that rulings granted by the country to Fiat Finance constituted illegal state aid.

- Text of Fiat decision of 21 October 2015: [FR](#), [EN](#)
- Pending court cases:
 - Fiat Chrysler Finance v. Commission: [EN](#)
 - Luxembourg v. Commission: [EN](#)

5. OECD webcast on BEPS and Panama

The OECD will host a webcast on 16 June 2016 from 14:00-15:00 h CET explaining the developments since the presentation of the final BEPS Recommendations in October 2015, including planned next steps, and the impact of Panama Papers and progress towards a global level playing field through enhanced transparency.

- Registration: [EN](#)

6. EP votes its version of ATAD and sets up “Panama Committee”

On 8 June 2016, the European Parliament voted on the proposed Anti-Tax Avoidance Directive, suggesting changes that would go far beyond the OECD BEPS Recommendations and the Commission’s draft Directive of 28 January 2016. The EP’s suggestions include:

- Setting a minimum tax rate of 15% on foreign income as part of the switch-over clause, with any difference between a lower foreign rate being payable;
- Limiting the deductibility of borrowing costs to 20% of EBITDA or € 2 million, whichever is higher;
- Drawing up an exhaustive black list of tax havens and countries, including those in the EU, complemented with a list of sanctions for non-cooperative jurisdictions and for financial institutions that operate within tax havens;
- Prohibiting the use of letterbox companies;
- Swiftly introducing a common consolidated corporate tax base (CCCTB);
- Increasing the transparency of trust funds and foundations;
- Introducing a common method for calculating the effective corporate tax rate in each member state to allow for comparison across the EU;
- Introducing a cross-border tax dispute resolution mechanism with clearer rules and timelines by January 2017; and
- Creating a harmonized, common European taxpayer identification number to serve as a basis for effective automatic exchange of information between member states.

The EP's opinion is not binding for the EU Council which will have to vote unanimously and will try to reach political agreement on the proposal at its next meeting this Friday.

As anticipated in the last issue of the Tax Top 5, the EP also agreed to set up an inquiry committee into alleged contraventions and maladministration in the application by the EU Commission or member states of EU laws on money laundering, tax avoidance and tax evasion, as a follow-up to "Panama Papers".

- Press release ATAD, 8 June: [EN](#) (all EU languages)
- EP vote ATAD: [EN](#) (all EU languages)
- Press release Panama Committee, 8 June: [EN](#)
- EP vote Panama Committee: [EN](#) (all EU languages)

7. CFE issues Opinion Release on corporate tax transparency and tax rulings

On 13 June 2016, the CFE issued an Opinion Release on "Strengthening corporate tax transparency in the EU", following up on its previous work in this matter. The statement stresses the importance of tax rulings and APAs as instruments to create legal certainty, provided that they comply with EU state aid rules. It supports mandatory exchange of tax rulings information among tax administrations but warns against publication of tax rulings.

- Opinion Release (13 June 2016) and related Opinion Statement (June 2015): [EN](#)

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

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