CFE's Tax Top 5
Key tax news of the week

25 July 2016

1. Commission proceeds against Austrian requirement for non-residents to have fiscal representative

On 22 July 2016, the European Commission has asked Austria to change its rules which require non-resident taxpayers to appoint representatives to administer their tax affairs on their behalf. The Commission considers that these rules result in discriminatory treatment on the grounds of nationality and are contrary to the right to free movement of goods, capital, services and people in the TFEU and EEA Treaties. The request takes the form of a reasoned opinion, the second step in EU infringement proceedings. Failing a satisfactory reaction within two months, the Commission may decide to refer the matter to the EU Court of Justice (CJEU).

- Press release, infringement package (see bottom of page): EN (several EU languages)

2. CJEU: Belgium may grant more advantageous tax credit treatment to third country investments than to investments in another member state

On 30 June 2016, the CJEU rendered its judgment in the Belgian preliminary ruling case C-176/15, *Riskin* and *Timmermans*. According to some Belgian tax treaties signed with third countries, taxes deducted at source in these countries could be credited unconditionally against taxes to be paid in Belgium, while Belgium, in its double tax treaty with Poland, did not grant the same unconditional treatment to taxes levied at source in Poland. Following the opinion of the Advocate-General, the Court accepted this difference in treatment.

- Judgment: EN (All EU languages)
- Advocate-General opinion, 12 April 2016: DE (several EU languages available, not EN)

3. CJEU: German law may limit inheritance tax reduction to cases where the assets had been taxed in Germany before

On 30 June 2016, the CJEU delivered its judgment on the German inheritance tax case Feilen (C-123/15). Under German law, where an estate includes assets that had already been inherited during the ten years prior to the acquisition, and inheritance tax was levied in Germany in respect of that earlier acquisition, there can be a reduction in inheritance tax under certain conditions. Where inheritance tax had been levied in another member state, such reduction is not granted. The Court concluded that the restriction on the movement of capital resulting from this rule is justified by the need to preserve the coherence of the tax system.

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

4. **Commission asks Austria not to charge VAT on resale rights on works of art**

On 22 July 2016, the European Commission has requested Austria to change its rules on the VAT treatment of resale rights on works of art. Resale rights – which give rise to what are commonly known as 'royalties' - constitute an intellectual property right which allows an artist to receive a percentage of the sale price of a work of art when it is resold. In Austria, VAT is charged on the resale of works of art. As there is no contractual relationship of any kind between the buyer and the artist, the Commission considers that such a provision is an infringement of the VAT Directive. The CJEU has already required (C-16/93, Tolsma) that there must be a legal relationship between the provider and the recipient for the service to be taxable. The request takes the form of a reasoned opinion. In the absence of a satisfactory reaction within two months, the Commission may decide to refer the matter to the CJEU.

- Press release, infringement package (see bottom of page): EN (several EU languages)

5. **CJEU accepts Portuguese withholding tax on foreign financial institutions but rejects discriminatory deductions treatment**

On 13 July 2016, the CJEU decided in the Portuguese preliminary ruling case *Brisal* et. al, C-18/15, that the application of a withholding tax at source to the income of non-resident financial institutions, while no such withholding tax is levied on domestic financial institutions, may be justified. However, business expenses directly related to the activity in question must be deductible if such opportunity is given to resident financial institutions.

- Judgment: EN (All EU languages)
- Advocate-General Opinion : EN (All EU languages)

6. **CJEU condemns obstacles to repayment of Romanian car tax levied in violation of EU law**

On 30 June 2016, the CJEU rendered its judgment in the Romanian preliminary ruling case Câmpean, C-200/14, on conditions for the repayment of taxes levied in violation of EU law, i.e. a pollution tax on motor vehicles. The Court stated that the repayment of this tax may not be made more difficult than repayment of taxes levied in violation of domestic law; neither may a member state impose less favourable conditions on the repayment that relate specifically to that tax, or provide that the repayment is made by instalments over five years and contingent on the availability of funds received in respect of another tax.

- Judgment: EN (All EU languages)
- Advocate-General opinion: EN (All EU languages)

7. **OECD advises on reform of Italian tax administration**

On 19 July 2016, the OECD published a report containing recommendations on reforming the Italian tax administration, with a focus on increasing voluntary taxpayer compliance and tax administration´s service to taxpayers. Non-compliant taxpayers should receive earlier notices and be sanctioned quicker. The analysis was carried out upon request of the Italian government. Historically, while compliance was low, tax administration´s focus was on audit and control, with many tax debts uncollectable. As the OECD points out, information technology, data analytics and related administrative simplifications can and should be at the centre of these reform efforts.

- OECD press release: EN
- OECD Report, January 2016: EN
- OECD key findings and recommendations, February 2016: EN

8. OECD overview on initiatives in international tax coordination, transparency and cooperation

For the meeting of the G20 Finance Ministers on 23/24 July in Chengdu/China, the OECD has prepared an overview on the current state of play of its various initiatives aiming at international tax coordination, transparency and cooperation such as BEPS, the Common Reporting Standard in automatic exchange of bank account information and the Global Forum´s peer review process, putting an emphasis on the inclusiveness of the processes, i.e. the involvement of non-OECD countries.

- Report: EN

*****

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

Follow us on Linked in