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ECJ: France in breach of EU law concerning Dividend Taxation

The Court of Justice of the European Union ("ECJ") has rendered a judgment on 4 October in Case C-416/17 *Commission v France*, on an action for infringement of EU law initiated by the European Commission against the French Republic. The case concerns discriminatory tax treatment of parent companies which receive dividends from foreign subsidiaries with regard to the right to reimbursement of tax levied in breach of EU law, as interpreted by ECJ in its ruling C-310/09 Accor.

Regarding the French tax rules that seek to prevent the economic double taxation of distributed profits, the Court reiterated that settled ECJ case-law requires from a Member State, which has a system for relief of double economic taxation as regards dividends, to treat dividends paid to residents by resident companies in the same way as dividends paid to residents by non-resident companies, in a situation where comparability has been established (national or equal treatment principle). ECJ found that France was required, in order to bring an end to the discriminatory treatment in the application of the tax mechanism seeking to avoid the economic double taxation of distributed dividends, to take into account the taxation levied earlier on the distributed profits resulting from the exercise of the taxation powers of the Member State in which the dividends originated, within the limits of its own powers of taxation. Such treatment is required irrespective of the level of the chain on which that tax was levied, a subsidiary or a sub-subsidiary. By failing to bring an end to such discriminatory tax treatment of dividends France was in breach of the freedom of establishment and the freedom of movement of capital, as set out in Articles 49 and 63 of the Treaty.

ECJ also established in *C-416/17 Commission v France* that the French Supreme Court for administrative matters, *Conseil d'État* was legally required under EU law to submit a preliminary question to ECJ in absence of established *acte clair* case-law, in order to prevent incorrect interpretation of EU law (cf. CILFIT-ruling criteria establishing duty to refer a preliminary question to ECJ). Since the *Conseil d'État* failed to make such a reference in a situation where the appropriate application of EU law could not be established as a matter of certainty, ECJ found that France was in breach of its obligations under EU law (Article 267 of the Treaty).

ECOFIN Approves VAT quick-fixes, Reverse Charge and E-Publication Regulation

At a meeting of the Council of the EU (ECOFIN) in Luxembourg last week, agreement was reached on a number of issues in relation to the day-to-day running of an EU VAT system. The measures agreed included: VAT quick-fixes, generalised reverse charge and e-publication Regulation.

- ***VAT Quick-Fixes***

The VAT "quick-fixes" are designed to address specific issues with the EU VAT rules, pending the introduction of a definitive EU VAT Regime, as follows:

- Call-off stock arrangements – simplification and harmonisation of rules regarding call-off stock arrangements, where a vendor transfers stock to a warehouse at the disposal of a known acquirer in another member state;
- VAT identification number – introduction of an identification number for a customer as an additional condition for VAT exemption for intra-EU supplies of goods;
- Chain transactions – simplification and harmonisation of rules regarding chain transactions; and
- Proof of intra-EU supply – introduction of a common framework of criteria of documentary evidence required to claim a VAT exemption for intra-EU supplies.

- ***Reverse-Charge***

The Council reached political agreement on the proposal to allow Member states facing endemic carousel fraud to apply a generalised reversal of payment of VAT liability from supplier to customer. The reverse charge may only be used by a Member state which meets certain eligibility criteria and has been authorised by the Council to use the reverse charge mechanism.

- ***E- Publications***

In addition, the Council adopted the proposed measures to strengthen administrative cooperation providing for the exchange and analysis of information between Member States in order to better prevent VAT fraud, as well as a VAT proposal allowing member states to apply reduced, super-reduced or even zero VAT rates to electronic publications to align rules for electronic and physical publications, and to reflect the EU's "digital single market" plan.

3. Switzerland Commences with Exchange of Financial Account Information

The Swiss Federal Tax Administration (FTA) announced on 5 October 2018 that Switzerland has commenced with exchanging financial account information within the framework of the global standard on the automatic exchange of information (AEOI). The exchange of information shall allow the tax authorities to verify whether taxpayers have correctly declared their financial accounts abroad in their tax returns. Two million financial accounts are reportedly part of the automatic exchange of information, which includes the name, address, state of residence and tax identification number, as well as information concerning the reporting financial institution, account balance and capital income.

The automatic exchange of information is taking place between partner countries of the European Union (excluding Romania and Cyprus), and, Australia, Canada, Guernsey, Iceland, Isle of Man, Japan, Jersey, Norway, South Korea. The Swiss financial information was first exchanged at the end of September 2018.

4. Tax Inspectors Without Borders Report Significant Progress in Developing Countries

Tax Inspectors Without Borders, a joint initiative of the OECD and the UNDP has reported significant improvements in the tax inspection capacities of developing countries in its Annual Report. Increased tax revenues directly attributable to this programme are estimated at 414 million US dollars. This innovative international co-operation initiative deploys qualified experts in developing countries to strengthen their ability to effectively tax multinational enterprises. The Tax Inspectors Without Borders Annual Report covers the activities from May 2017 to April 2018, effectively the second full year of operations under the OECD/ UNDP partnership arrangements.

5. New CFE Executive Board Appointed by General Assembly in London

CFE Tax Advisers Europe elected a new Executive Board for the calendar years 2019-2020 at the General Assembly held in London on 28 September 2018. The new Executive Board will take up their duties on 1 January 2019.

CFE President Piergiorgio Valente said of the appointments, “we are delighted with the election of the new Executive Board. The policy priorities of the new Board remain closely related to our vision of drawing EU Member states’ attention to taxpayers’ rights and advancing the rights of tax advisers throughout our Member organisations.”

Full details of the newly appointed Members of the Executive Board are available here.