



DIRECT TAX

CJEU: Germany cannot make tax deferral conditional on reinvestment of capital gains in Germany

The EU Court of Justice (CJEU) decided on 16 April 2015 in an infringement procedure against Germany (C-591/13) that German income tax rules making a deferral of taxation on capital gains from the sale of an asset of a permanent establishment located in Germany subject to the condition that those capital gains are reinvested in the acquisition of replacement assets of a permanent establishment within Germany are incompatible with the EU and EEA freedom of establishment.

READ MORE *(click to open)*:

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

CFE responds to OECD consultation on CFC rules

On 3 April 2015, the OECD published a discussion draft on strengthening controlled foreign company (CFC) rules, as part of the stakeholder consultation process accompanying the OECD's base erosion and profit shifting (BEPS) Action Plan (Action 3). CFC rules are designed to enable jurisdictions to tax income earned by an entity in a foreign country, often a low-tax jurisdiction, controlled by a resident shareholder, where income is shifted to this entity for tax reasons. CFC rules are typically designed to act as a deterrent, to prevent profit shifting. The OECD Discussion Draft discusses the different components of CFC rules and considers how these can be made more effective. The CFE response has been developed jointly with AOTCA, the Asia-Oceania Tax Consultants' Association, and submitted to the OECD on 1 May 2015.

READ MORE *(click to open)*:

- Discussion draft: [EN](#)
- CFE/AOTCA Opinion Statement : [EN](#) (final version to be published soon)

CJEU rules on Romanian motor vehicle registration tax

On 14 April 2015, the CJEU decided in the preliminary ruling case C-76/14, Manea, that Romania can impose a tax on imported second-hand motor vehicles at the time of their first registration in Romania and on vehicles already registered in the country at the time of the first transfer of the ownership within Romania. It is however not possible to exempt from this tax already registered vehicles for which a tax previously in force but found to be incompatible with EU law has been paid, as such exemption would favour non-imported second hand vehicles over imported ones.

READ MORE *(click to open)*:

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

OECD consults on cost contribution arrangements

On 29 April 2015, the OECD has opened public consultation on cost contribution arrangements, as part of its BEPS Action Plan (Action 8: Assure that transfer pricing outcomes are in line with value creation: Intangibles). The aim is to develop rules to prevent base erosion and profit shifting by moving intangibles among group members. Deadline for comments is 29 May 2015.

READ MORE *(click to open)*:

- Consultation website: [EN](#) (FR available)
- Discussion Draft : [EN](#)

CFE comments on two CJEU cases involving inheritance tax

On 4 May 2015, the CFE issued its Opinion Statement ECJ-TF 1/2015 on two CJEU decisions in infringement cases concerning inheritance and gift tax, C-127/12, Commission v. Spain, and C-211/13, Commission v. Germany. In both cases, the national rules were found to violate the free movement of capital.

The Spanish case concerned regional amendments to the national tax code which resulted in lower effective tax rates applicable to residents of the respective regions. The other case concerns high tax allowances under German law for spouses, parents, children and certain relatives which were only applicable if either the deceased/donor or the beneficiary, at the time of the death or the gift, resided in Germany. Where both resided in other member states, only a much lower allowance applied. The Opinion Statement encourages the Commission to propose EU measures and urges member states to at least adopt unilateral measures to eliminate double taxation in the largely uncoordinated field of inheritance and gift taxes.

READ MORE (click to open):

- CFE Opinion Statement: [EN](#)
- Judgment in case C-211/13 (Germany): [DE](#) (FR available)
- Judgment in case C-127/12 (Spain): [ES](#) (FR available)

VAT Expert Group welcomes extension of cross-border rulings project

On 31 March 2015, the VAT Expert group welcomed the European Commission's decision to extend the pilot project on cross-border VAT rulings until 2018, asking businesses to make use of this possibility to obtain a binding ruling in cross-border VAT situations and urging the 13 EU member states that do not yet support the initiative to join. ([see CFE European Tax & Professional Law Report March 2015](#)). Currently, Belgium, Estonia, Spain, France, Cyprus, Lithuania, Latvia, Malta, Hungary, Netherlands, Portugal, Slovenia, Finland, Sweden and the United Kingdom participate in the project. The VAT Expert Group was created in 2012 to advise the Commission on VAT matters. CFE is part of this group.

READ MORE (click to open):

- VAT Expert Group Opinion : [EN](#)

INDIRECT TAX

CJEU rules on services supplier's right to VAT refund if the tax was also paid erroneously by the recipient

On 23 April 2015, the CJEU held in the Bulgarian preliminary ruling case C-111/14, GST Sarviz AG Germania, that the only person liable to VAT is the taxable person supplying the services where these services are supplied from a fixed establishment located in the member state in which the VAT is payable. The recipient of these services established in the same member state cannot be assumed liable, even if he has already paid the tax on the mistaken assumption that the supplier did not have a fixed establishment in that state. However, a supplier of services has a right to a refund of the VAT which he has paid when the recipient is refused the right of deduction on the ground that he did not have the corresponding tax document and any adjustment of tax documents is precluded under national law where a definitive tax adjustment notice exists. The principle of neutrality of VAT precludes a member state from collecting the VAT twice.

READ MORE (click to open):

- Judgment: [EN](#) (All EU languages)

CJEU rules on the definition of capital company

On 22 April 2015, the CJEU decided in the Polish preliminary ruling case C-357/13, Drukarnia Multipress, that a partnership limited by shares under Polish law must be regarded as a capital company in the sense of the Directive on Indirect Taxes on the Raising of Capital 2008/7/EC even if only some of its capital and members satisfy the conditions laid down by that provision.

READ MORE (click to open):

- Judgment: [EN](#) (all EU languages)
- Opinion of Advocate-General Jääskinen : [EN](#) (all EU languages)

CJEU decides on place of supply of services performed for a company in another member state, if the item remains in the state where the service is rendered

On 30 April 2015, the CJEU delivered its judgment in the Hungarian preliminary ruling case C-97/14, SMK. The case concerned a Hungarian group company which performed the assembly of remote controls for another group company established in the UK which bought the raw materials and sold the finished products to a Belgian group company which resold them

to other member states and third countries. The finished products remained in Hungary from where they were shipped to the final purchasers. The question at issue was whether the UK or Hungary were to be considered as the place of supply and accordingly, whether tax had to be added to the invoice for the assembly services carried out. The Hungarian group company had been ordered to pay VAT arrears in Hungary and had been heavily fined. In its judgment, the Court confirmed that Hungary was to be considered the place of supply. The fact that the goods were shipped to other countries after the sale to the purchasers is irrelevant, as they were not shipped in the context of the performance of the relevant service, i.e. their assembly.

READ MORE (click to open):

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

CJEU decides on the VAT treatment of ancillary charges in immovable property rent

On 16 April 2015, the CJEU has decided in the Polish preliminary ruling case C-42/14, *Wojskowa Agencja Mieszkaniowa w Warszawie* on the VAT treatment of charges by a landlord to a tenant for electricity, heating, water and waste disposal supplied by a third party. The CJEU clarified that the letting of immovable property and the provision of water, electricity and heating as well as waste collection accompanying that letting should normally be regarded as distinct and independent supplies that may require a separate VAT treatment, unless the elements of the transaction are so closely linked that they form a single, indivisible economic supply, which is for the national court to decide.

READ MORE (click to open):

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

Commission publishes VAT Committee documents of last two meetings

The European Commission has published the working documents of the 102nd and 103rd VAT Committee meetings of 31 March and 20 April 2015. Matters dealt with include the implications of the CJEU judgment of September 2014 on VAT grouping in the *Skandia* case. The VAT Committee consists of the

Commission and member states' tax administrations' representatives. It was set up to provide guidance and promote the uniform application of the VAT Directive. It cannot take legally binding decisions.

READ MORE (click to open):

- VAT Committee agendas and meeting documents: [EN](#)

Sweden has to exempt public postal services from VAT

On 21 April 2015, the CJEU decided in the infringement case C-114/14, *Commission v. Sweden*, that Sweden has to exempt public postal services from VAT. The country had refused to do so, arguing that a public postal service no longer exists in the country since the liberalisation of the sector in the 1990s and that a VAT exemption of one service provider only would give this provider an advantage over its competitors.

READ MORE (click to open):

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

CJEU rules on the taxable amount for calculation of VAT on an application of a building

On 23 April 2015, the CJEU ruled in the Belgian preliminary ruling case C-16/14, *Property Development Company*, that the taxable amount for the calculation of VAT on an application of a building that the taxable person has constructed is to be the purchase price, at the time the application is made, of buildings whose location, size and other essential characteristics are similar to those of the building in question. In that regard, it is irrelevant whether part of the purchase price is due to interest on borrowed capital. The judgment refers to the former (6th) VAT Directive.

READ MORE (click to open):

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

OTHER TAX POLICY

CFE at European Parliament hearing on tax rulings and other tax policy questions

On 16 April 2015, CFE President Henk Koller was interviewed by members of the European Parliament's Special Committee on Tax Rulings and Measures Similar in Nature or Effect (TAXE) on tax rulings and other matters related to the fight against tax evasion and tax avoidance. The discussion touched upon a wide field of topics such as tax advisers' ethics, recruitment and pricing policy, relation to tax officials, country by country reporting and the CCCTB proposal. Henk Koller's initial statement and the questions and answers are available on the Parliament's website.

READ MORE *(click to open)*:

- Video recording : [All EU languages](#)
(CFE contribution starts at 11 :18 hrs)

by employees as well as the associated social security contributions made by employees and employers. The study finds that in average, taxes on wages have risen by 0.1 percentage point to 36% in 2014, continuing a trend that has started in 2010 when the average tax and social security burden was still about 1 percentage point lower. According to the OECD, most of the recent increase is not due to an increase in statutory income tax rates but due to the fact that wages have risen faster than tax allowances and credits. The largest increase was in Ireland (+1.1 percentage points) where a higher proportion of earnings was subject to tax as the statutory tax rates, thresholds and basic tax credit amounts remained unchanged since 2011. The only country with a decline of more than one percentage point was Greece (-1.2 percentage points) mainly due to decreasing employer social security contributions (-0.9 percentage points). A special chapter covers labour income in five major non-OECD economies: Brazil, China, India, Indonesia and South Africa.

READ MORE *(click to open)*:

- Report: Taxing Wages 2015: [EN](#)

OECD consults on collection and analysis of BEPS-related data

On 16 April 2015, the OECD opened a public consultation on improving the availability and analysis of data on BEPS, including to monitor on an ongoing basis the implementation of the BEPS Action Plan and to evaluate the effectiveness and economic impact of actions to address BEPS (Action 11). The analysis should also cover spillover effects across countries. The OECD stresses that this has to respect taxpayer confidentiality and the administrative costs for tax administrations and businesses. The consultation period ends on 8 May.

READ MORE *(click to open)*:

- Discussion Draft: [EN](#)

PROFESSIONAL LAW

CFE comments on disclosure of tax avoidance schemes

On 30 April 2015, the CFE commented on the OECD discussion draft on mandatory disclosure rules for certain tax arrangements, designed to help tax administrations tackle tax avoidance. The OECD recommends that the promoters of schemes meeting certain hallmarks, which may be tax advisers, should be obliged to report, possibly in addition to the taxpayer himself. Further recommendations concern the definition of eligible schemes, the reporting timeframe, the content of the report, sanctions and international schemes that produce effects in countries different from the country that requires disclosure. In their joint Opinion Statement, CFE and AOTCA demand a sound cost-benefit analysis and stakeholder consultation to be carried out prior to the introduction of any mandatory disclosure rules, explaining that such rules may not produce the desired effect of reducing "aggressive" arrangements in many countries and may thus not justify the additional compliance burden imposed on taxpayers and advisers, e.g. for training staff and implementing due diligence procedures. Another main point is workable definitions of hallmarks to identify reportable schemes while preventing over-reporting and legal uncertainty for

OECD publishes overview on wage taxes

On 14 April 2015, the OECD presented its annual overview on developments in wage taxation in its member countries, titled "Taxing Wages", providing cross-country comparative data on income tax paid

taxpayers and advisers. This is particularly difficult for arrangements that have effects in several jurisdictions. Finally, CFE and AOTCA urge the OECD to make a strong statement against retroactivity of legislation adopted in response to reported schemes. The CFE will present its views at a stakeholder meeting in Paris on 11 May.

READ MORE (click to open):

- Discussion draft : [EN](#)
- AOTCA/CFE Opinion Statement : [EN](#)

CFE NEWS

CFE Annual Report 2014

The CFE has published its Annual Report, summing up CFE's activities in the areas of tax law and policy and professional affairs as well as CFE conferences, political networking, publications and services rendered to CFE member organisations, their individual members and the public. The Annual Report also lists the members of the CFE bodies. The Report appears in a new format, placing more emphasis on the CFE's technical and policy output.

READ MORE (click to open):

- Annual Report: [EN](#)

IMPRESSUM



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