



CFE EVENTS

CFE Forum on 26 March 2015: “Tax governance and tax risk management in a post-BEPS world”

As the BEPS project proceeds to completion, it is crucial that companies, their tax advisers and tax administrations are aware of the implications of the new international framework grounded on transparency, multilateral cooperation and information exchange. With concepts such as the “spirit of the law”, “economic substance” and “value creation” coming to the fore, tax mitigation and the structuring of companies’ businesses will have to take into account a larger number of variables and a different set of risks. The forthcoming 2015 CFE Forum will address these pressing topics in direct and in indirect tax and help companies and their tax advisers prepare for the future.

READ MORE (click to open):

- Programme and registration: [EN](#)

DIRECT TAX

CJEU rules on cross-border group relief and final losses

On 3 February 2015, the EU Court of Justice (CJEU) has found UK legislation making cross-border loss relief subject to certain conditions compatible with EU law. The decision dismisses the European Commission’s infringement action against the UK (case C-172/13). For a more detailed report, please consult [last month’s CFE European Tax & Professional Law Report](#).

CJEU dismisses German inheritance tax discrimination

On 24 February 2015, the EU Court of Justice (CJEU) rendered its judgment on the preliminary ruling case C-559/13, Grünewald, upon reference by the German Court of Finance. The CJEU held that a member state must allow a non-resident taxpayer who has received in that state commercial income from shares in a business which were transferred to him by a relative as a gift by way of anticipated succession, to deduct from that income the annuities which he has paid to that relative in consideration for that gift, whereas that legislation allows a resident taxpayer to make such a deduction.

READ MORE (click to open):

- Judgment: [All EU languages](#)

OECD and G20 agree on key elements to counter BEPS

On 6 February 2015, the OECD reported that its members and the G20 countries have reached agreement on the following measures to counter BEPS:

- a mandate to launch negotiations on a multilateral instrument to streamline implementation of tax treaty-related BEPS measures; the OECD intends setting up an ad-hoc negotiating group open to all states, with the aim to conclude drafting by the end of 2016.
- an implementation package for country-by-country reporting (based on the template proposed in September 2014) as of 2016 and a related government-to-government exchange mechanism to start in 2017; according to the new guidance, reports should be filed for multinationals with a turnover above € 750 million in their countries of residence;
- criteria to assess whether preferential treatment regimes for intellectual property (patent boxes) are harmful; these are based on the “modified nexus approach”, initially proposed by the UK and Germany, which allows a taxpayer to receive benefits on IP income, to the extent that most of this income is linked to expenditures incurred by the taxpayer himself; the compromise also provides for a transitional regime until 2021.

READ MORE (click to open):

- Press release: [EN](#)
- Mandate for developing a multilateral instrument: [EN](#)
- Guidance on country-by-country reporting: [EN](#)
- Note on the “modified nexus approach” to patent boxes: [EN](#)

READ MORE (click to open):

- CFE Opinion Statement FC 5/2015: [EN](#)
- All responses received by the OECD: [EN](#)

Infringement actions on registration tax on motor vehicles against Finland, Ireland and Portugal

On 26 February 2015, the European Commission referred Portugal to the CJEU for its registration tax for imported second-hand vehicles which, according to the Commission, does not sufficiently take into account depreciation. On the same day, the Commission decided to send reasoned opinions to Finland and Ireland for their tax treatment of motor vehicles rented and leased in another member state and registered by a resident, demanding that in such cases, only a proportionate amount of tax should be levied. The Commission also criticised the administrative burden for such cases.

READ MORE (click to open):

- February infringement package : [All EU languages](#)
- Press release concerning Portugal: [PT/DE/EN/FR](#)

BEPS: CFE comments on treatment of interest deductions

The CFE has commented on the OECD Discussion Draft of 18 December 2014 on the deductibility of interest deductions and other financial payments which is Action 4 of the OECD’s BEPS Action Plan. The CFE argues against general limits to deductibility of interest expense as this will often lead to double taxation. The suggestion to allow the carrying forward of interest expenses over several years does not provide for an adequate solution either as it leaves the possibility that companies will not be able to recover the expenses incurred.

OECD provides update on BEPS progress

On 12 February 2015, the OECD hosted a webcast providing for an update to its work to counter corporate base erosion and profit shifting. The update can be accessed online.

READ MORE (click to open):

- Webcast: [EN](#)

Advocate General considers German exit tax rule on hidden reserves compatible with EU freedoms

On 26 February 2015, CJEU Advocate General Jääskinen delivered his opinion in the case C-657/13, Verder LabTec, upon request of the Financial Court of Düsseldorf, concluding that German law may require disclosure of hidden reserves contributing to taxable profits, upon the transfer of an asset from a domestic to a foreign permanent establishment of the same undertaking, if national law provides for the possibility of spreading that income equally over 10 financial years. The opinion does not bind the CJEU.

READ MORE (click to open):

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

CJEU: Czech gift tax on emission certificates incompatible with EU law

On 26 February 2015, the CJEU decided in the Czech preliminary ruling case C-43/14, ŠKO–ENERGO, that the EU regime for emission trading prohibits a gift tax on emission certificates allocated free of charge to electricity producers, to the extent that such tax does not respect the rule that 90% of these certificates, in the period from 2008 until 2012, must be given free of charge.

READ MORE (click to open):

- Judgment and Advocate-General Opinion: [All EU languages](#)

READ MORE (click to open):

- Call for applications: [EN](#)
- Information on the EU VAT Forum: [EN/DE/FR](#)

INDIRECT TAX**Germany referred to CJEU for limitation of VAT exemption of shared services**

On 26 February 2015, the European Commission has decided to refer Germany to the CJEU because of its VAT legislation on exemptions for cost sharing groups. Cost sharing groups are associations of taxpayers for the purpose of purchasing services from third parties. According to the VAT Directive, services supplied by cost sharing groups to their members are exempt from VAT if the members' activities are exempted from VAT, the shared services are directly necessary for the members' activities, the group claims exact reimbursement of each member's share of the joint expenses and finally, such exemption does not cause distortions of competition. However, the VAT Directive does not limit the exemption to any particular sector, as German law, for health and medical services.

READ MORE (click to open):

- February infringement package : [All EU languages](#)
- More detailed press release : [DE/EN/FR](#)

Commission renews mandate for EU VAT Forum

On 20 February 2015, the European Commission issued a call for applications for the second three-year term of the EU VAT Forum, an expert group of industry, tax practitioner and member states representatives tasked with finding practical, non-legislative solutions to cross-border VAT problems, e.g. a more efficient use of IT technology, the fight against fraud and the reduction of administrative burden. The current mandate of the VAT Forum in which CFE is also active will expire in September 2015. Applications must be sent by 20 March 2015.

EU VAT Committee publishes guideline on VAT refund for non-taxable persons registered for a MOSS

On 16 February 2015, the EU VAT Committee updated its list of guidelines, including, inter alia, guidance on the right to VAT refund for non-taxable persons registered with a "mini-one-stop-shop" and on the use of the refund application, adopted unanimously at the latest VAT Committee meeting on 31 October 2014. The VAT Committee consists of representatives from all EU member states; its bindings are not binding for the administration.

READ MORE (click to open):

- All guidelines: [EN/DE/FR \(see page 180 for MOSS guideline\)](#)
- More information on the EU VAT Committee and its guidelines: [EN/DE/FR](#)

CFE comments on proposed changes to OECD VAT/GST Guidelines

The CFE has responded to the OECD's public consultation on two proposed elements to be added to its International VAT/GST Guidelines, following from the OECD BEPS work on taxation of the digital economy. The proposed changes concern the place of taxation for cross-border B2C supplies of services and intangibles and provisions to support the application of the Guidelines in practice.

READ MORE (click to open):

- CFE Opinion Statement FC 6/2015: [EN](#)

HMRC issues brief on VAT grouping rules

On 10 February 2015, in the wake of the EU Court of Justice's Skandia judgment of 17 September 2014 (C-7/13), the HMRC has issued a brief setting out its position on the implications of the judgment.

READ MORE (click to open):

- Brief (2) 2015 : [EN](#)

Advocate-General opinion on VAT treatment of car breakdown warranties

On 4 February 2015, CJEU Advocate-General Szpunar has delivered his opinion in the case C-584/13, Mapfre, about the VAT treatment of second-hand car breakdown warranties. Under the warranty, the insurance company Mapfre charged car dealers a fixed sum and agreed to meet the cost of repairing the vehicles if they broke down during a specified period. Mapfre treated the charges to the dealers as subject to VAT. The question at issue was whether the supplies by Mapfre would have to be considered insurance and be subject to a French insurance tax instead of VAT, as claimed by the French tax authority and supported by the Advocate General. The opinion is not binding for the CJEU judges.

READ MORE (click to open):

- Advocate-General Opinion: [FR](#) (Several languages available, not EN)

Commission: no excise duty exemption for small producers of alcoholic beverages

On 26 February 2015, the European Commission has requested the UK to amend its excise duty scheme that exempts from duty cider and perry made by small domestic producers whose production does not exceed 70 hectolitres over a period of 12 consecutive months and who make such products for sale. As the Commission explains, the EU excise duty rules do not provide for an exemption for small amounts of alcohol produced for sale. The Commission's request takes the form of a reasoned opinion.

READ MORE (click to open):

- February infringement package: [All EU languages](#)

Advocate-General: German nuclear fuel tax in conformity with EU law

In his opinion delivered on 3 February 2015 in case C-5/14, CJEU Advocate-General Szpunar came to the conclusion that the German tax on the use of fissile materials for the production of energy is neither in contradiction to the EU Energy Products Directive nor state aid (to the extent that producers of non-nuclear energy are not charged).

READ MORE (click to open):

- Advocate General Opinion: [FR](#) (several languages available, not EN)

OTHER TAX POLICY

Report from 2014 meeting of UN Tax Committee

The United Nations' Committee of Experts on International Cooperation in Tax Matters has published the report from its 10th meeting in October 2014. The Committee discussed updates of various elements of the UN Model Tax Convention and a number of topics concerning developing countries, namely the Practical Transfer Pricing Manual for Developing Countries, the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries, taxation of extractive industries and of development projects and capacity-building. The CFE has observer status with the UN Economic and Social Committee and regularly attends the meetings of the Committee of Experts.

READ MORE (click to open):

- Report: [EN](#) (ES, FR, RU, CN, AR available)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

“Swiss leaks”: Journalists publish data on illicit tax dealings of Swiss HSBC branch

On 8 February 2015, the International Consortium of Investigative Journalists (ICIJ) announced the leakage of 60,000 files associated with 100,000 individuals and legal entities, containing information on illicit dealings of HSBC’s Swiss branch with i.a. suspected war criminals until 2007. Some of the information was already held and exchanged by the French tax administration with other countries, leading to investigations and successful collection of reportedly more than € 1 billion in taxes and penalties. The bank, in its statement, explained how internal procedures have changed since the commission of the questionable practices.

READ MORE *(click to open)*:

- Link to ICIJ’s website: [EN](#)
- Swiss leaks search function: [EN](#)
- HSBC reponse: [EN](#)

Italy and Switzerland sign agreement to encourage voluntary disclosure of undeclared funds

On 23 February 2015, Italy and Switzerland signed an agreement with the aim of encouraging Italian residents to regularise undeclared assets held in Switzerland. The deal provides for a partial amnesty for account holders who declare their Swiss accounts to the tax authorities by 30 September 2015. The agreement also modifies taxation rules for cross-border commuters. According to estimates, undeclared Italian funds in Switzerland amount to € 173 billion.

READ MORE *(click to open)*:

- Bloomberg article : [EN](#)
- EUObserver article : [EN](#)

Exchange of tax rulings and disclosure of arrangements by tax advisers: Commission announces tax transparency package

On 18 February 2015, the European Commission has announced legislation on the automatic exchange of certain cross-border tax rulings. This will be done by amending the Directive on Administrative Cooperation in Direct Tax. The package is expected to also contain a (non-legislative) communication on tax transparency which considers the possibility of requiring tax advisers to disclose tax avoidance schemes. A second package of measures dealing with fair and efficient corporate taxation has been announced for early June. That package is expected to provide new suggestions for a CCCTB (common consolidated corporate tax base). It is still unconfirmed whether this will include a new legislative proposal and whether the elements of consolidation and optionality which have been two characteristics of the 2011 proposal will be abandoned.

READ MORE *(click to open)*:

- Press release : [EN](#) (All EU languages)

HMRC consults on penalties for tax avoidance and abuse

On 30 January 2015, the UK tax administration HMRC has invited public comments on proposals to introduce new measures for serial users of tax avoidance schemes and how to introduce specific penalties for cases where the General Anti-Abuse Rule (GAAR) applies. HMRC asks whether to introduce these measures, and on the detail of how these should be implemented. The consultation will be open until 12 March 2015.

READ MORE *(click to open)*:

- Consultation document: [EN](#)

STATE AID

Commission opens investigation into Belgian excess-profit tax rulings

On 3 February 2015, the European Commission has opened in-depth state aid investigations into the Belgian tax rulings practice of “excess-profit tax rulings” that allow multinational groups to reduce their corporation tax liability by „excess profits“ that are considered to result from the advantage of being part of a multinational group. Accordingly, such rulings are not available to Belgian groups or single companies. While Belgium claims that the system is justified under the arm’s length principle and to avoid double taxation, the Commission considers that the rulings may overestimate the benefits of belonging to a multinational group and doubts whether other countries actually tax these benefits. The outcome of the investigation is still open. Third parties have the possibility to comment. The decision to open investigations is not yet public.

READ MORE *(click to open)*:

- Press release: [EN](#) (DE FR NL available)
- Speech of Competition Commissioner Vestager, 3 February 2015: [EN](#)

Commission invites comments on tax rulings and state aid

On 6 February 2015, the European Commission published an invitation to comment on the in-depth state aid investigation into the Luxembourg rulings on the corporate tax treatment of Amazon, opened on 7 October 2014. Comments have to be sent within one month.

READ MORE *(click to open)*:

- Invitation to comment: [EN](#)

New EP Special Committee on tax rulings

On 12 February 2015, the European Parliament voted to set up a “Special Committee on tax rulings and other measures similar in nature or effect”. The Committee, for an initial period of six months, will look into EU member states’ tax rulings since 1991 and review how the European Commission currently applies its state aid rules with regard to rulings. Moreover, it will seek to establish any negative effects that aggressive tax planning has had on public finances and will deliver recommendations for the future. The setting up of the Special Committee had been preceded by a struggle between MEPs part of which had demanded the establishment of an inquiry committee whose scope would have been much more limited but which would have been vested with the power to ask for national documents to be handed over or to summon witnesses. However, the EP’s legal service had recommended that the creation of an enquiry committee be refused, stating that the proposal was ill-conceived as it did not specify the object of investigation and lacked clarity in identifying the offences to be examined. As a consequence, the EP’s conference of presidents, on 5 February, decided against the setting up of an inquiry committee. On 26 February 2015, the new Special Committee held its constituent meeting and elected Alain Lamassoure (EPP, FR) as its chair. As vice-chairs, the committee elected Bernd Lucke (ECR, DE), Marisa Matias (GUE/NGL, PT) and Eva Joly (Greens/EFA, FR).

READ MORE *(click to open)*:

- Press release of 12 February, Setting up of Committee: [EN](#) (FR available)
- List of committee members: [EN](#)
- Press release of 26 February, election of chairs: [EN/FR](#)
- Mandate of the Committee: [All EU languages](#)

Commission accepts commitments from France on fiscal exemptions for maritime chartering services

On 4 February 2015, the European Commission closed an in-depth investigation opened in 2013 to examine whether changes to French tax rules for maritime companies were in line with EU state aid rules ([see CFE European Tax & Professional Law Report November 2013](#)). The Commission had concerns that giving favourable fiscal benefits also to vessels sailing under non-EU flags would run counter the objectives of EU maritime transport policy. The recent decision was taken after France offered com-

mitments addressing the Commission's concerns: the country will now ensure that French tonnage tax payers flag at least 25% of their tonnage in the EEA.

READ MORE (click to open):

- Press release: [EN](#) (DE/FR available)

PROFESSIONAL LAW

ECtHR: Eavesdropping of conversation with a client infringed lawyer's right to privacy

On 3 February 2015, the European Court of Human Rights ruled that eavesdropping of telephone conversations between a lawyer and his client violated the lawyer's right to privacy, guaranteed under the EU Charter of Fundamental Rights. The measure was carried out in the context of criminal investigations against the client. However, the judicial order allowing the measure failed to take account of the rights of third parties, i.e. the lawyer, and therefore lacked proportionality. The lawyer who was not the client's representative in the same matter in which the investigation took place did not have a judicial means against the measure and could not obtain the deletion of the evidence collected.

READ MORE (click to open):

- Judgment : [FR](#)

IMPRESSUM



CONFEDERATION
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