



## DIRECT TAX

### CJEU rules on taxation of unrealised capital gains from transfer of assets to a PE in another member state

On 21 May 2015, the EU Court of Justice (CJEU) rendered its judgment in the German preliminary ruling case C-657/13, *Verder Labtec*, on the taxation of unrealised capital gains from IP rights transferred by a German company to a permanent establishment (PE) in the Netherlands. According to German law, the company was taxed on the profits from this transfer but was allowed to spread that profit equally over 10 years. The Court confirmed that this treatment was in conformity with EU law.

#### READ MORE *(click to open)*:

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

### OECD consults again on artificial avoidance of PE status

On 15 May 2015, the OECD released a second discussion draft on preventing the artificial avoidance of permanent establishment (PE) status (BEPS Action 7). Such avoidance often involves commissionaire arrangements between the parent company and local group entities, or artificial fragmentation of operations in order to allow entities to benefit from existing exemptions for preparatory and auxiliary activities. The revised discussion draft takes into account the comments the OECD received in a previous public consultation on the same issue, from October 2014 until January 2015. Rather than presenting a series of alternative options, the revised draft presents one specific preferred proposal with respect to each PE avoidance strategy identified. The deadline set was 12 June 2015.

#### READ MORE *(click to open)*:

- New discussion draft: [EN](#)
- Consultation website: [EN](#)
- CFE/AOTCA Opinion Statement FC 1/2015, January 2015: [EN](#)

### Second OECD consultation on preventing tax treaty abuse

On 22 May 2015, the OECD published a revised Discussion Draft on preventing tax treaty abuse (BEPS Action 6), taking into account the comments received during the previous public consultation (November 2014 – January 2015). Part 1 of this new discussion draft reflects the outcome of the discussion on an alternative “simplified” limitation-on-benefits (LOB) rule. Part 2 presents the outcome of the discussion of each of the 20 issues for follow-up work that were identified in the discussion draft of November 2014, including new proposals for treaty rules intended to address concerns related to special tax regimes and to changes to domestic law made after the conclusion of a treaty. Comments can be sent by 17 June 2015.

#### READ MORE *(click to open)*:

- Revised discussion draft on BEPS Action 6: [EN](#)
- Consultation website: [EN](#)
- CFE/AOTCA Opinion Statement FC 2/2015, January 2015: [EN](#)

### Commission hinting at new mandatory CCCTB

On 27 May 2015, the college of European Commissioners held an orientation debate on corporate taxation, discussing a re-launch of the CCCTB (common consolidated corporate tax base) with a focus on fighting tax avoidance. While no statement was made on whether the element of consolidation should be maintained, it became clear from various comments that the Commission has changed its position on whether the CCCTB should be voluntary. Commission Vice President Valdis Dombrovskis said that “it

is clear that especially those companies which are engaged in aggressive tax planning are not going to be the ones to voluntarily opt into the CCCTB system". There was no confirmation on whether the original CCCTB proposal of 2011 will be amended or withdrawn and replaced by a new proposal. It was noted that the Commission did not specifically discuss minimum rates or harmonization of tax rates. In his blog, Tax Commissioner Pierre Moscovici also announced proposals to improve the legal framework governing transfer prices. The Commission's "Action Plan on Corporate Taxation" which is expected to shed more light on the Commission's plans has been announced for 17 June 2015.

**READ MORE (click to open):**

- European Commission press release, 27 May 2015: [EN](#)
- Blog entry by Pierre Moscovici, 27 May 2015: [FR](#)

### 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. For more details, see [the CFE European Tax & Professional Law Report April 2015](#).

**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: [FR](#), [ES](#)

### CJEU allows flat tax on income from non-compliant third country investment fund

On 21 May 2015, the CJEU decided in the German preliminary ruling case C-560/13, Wagner-Raith, that a provision of German law which provides for flat-rate taxation of the income of holders of units in a "black" investment fund resident in the Cayman Islands that has not fulfilled certain statutory obligations can be justified.

**READ MORE (click to open):**

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

### Amazon starts bookings German and UK sales through local subsidiaries

According to The Guardian and Süddeutsche Zeitung, as of 1 May 2015, the retailer Amazon has changed its practice of booking its sales to German and UK customers through Luxembourg. These sales will now be booked in Germany and the UK respectively, generating tax revenue in these countries. In the UK, this will prevent profits from falling under the new Diverted Profits Tax, introduced in April 2015.

**READ MORE (click to open):**

- The Guardian article, 26 May 2015: [EN](#)
- Süddeutsche Zeitung article, 24 May 2015: [DE](#)

## INDIRECT TAX

### European Commission announces VAT reform proposals as part of new Digital Single Market strategy

On 6 May 2015, the European Commission issued its Communication on a Digital Single Market, suggesting solutions to a number of current hindrances to cross-border delivery of goods ordered and services received on-line. The Commission identifies the administrative burden of VAT compliance and distortions of competition through VAT rules as major obstacles and announces that it will propose a number of VAT changes in 2016. These will include:

- extending the single electronic registration and payment mechanism introduced in 2015 for e-services (Mini-one-stop-shop) to intra-EU and 3rd country online sales of tangible goods,
- introducing a common EU-wide VAT threshold to help small start-up e-commerce businesses,
- allowing for home country controls including a single VAT audit of cross-border businesses and

(iv) removing the VAT exemption for the importation of small consignments from suppliers in third countries.

**READ MORE (click to open):**

- Communication COM(2015)192: A Digital Single Market Strategy for Europe, 6 May 2015: [EN/DE/FR](#)
- Accompanying Commission staff working document SWD(2015)100: Analysis and evidence, 6 May 2015: [EN](#)
- Questions and answers : The Digital Single Market (European Commission website) : [EN](#)

### Study on the application and impact of the VAT exemption for importation of small consignments

The EU VAT Directive provides for a mandatory VAT exemption on the importation of small consignments below a € 10 threshold and an optional exemption below a value of € 22 which most member states apply, although some have made use of an option to exclude mail order sales from this exemption. The exemption was introduced in the 1980 to reduce compliance costs but has, with the emergence of e-commerce, led to distortions of competition due to providers who ship items via non-EU territories e.g. the Channel Islands. In its Communication on a Digital Single Market (see article in this report), the Commission has announced a proposal to abolish the small consignments exemption. A study published by the Commission on 22 May 2015 presents an overview of the legal framework and procedures in place in the 28 EU member states, as well as an economic analysis of the low value consignments market from 1999 until 2013, including an estimation of the potential VAT foregone by tax authorities due to this exemption.

**READ MORE (click to open):**

- Final Report: [EN](#)
- Executive Summary: [EN](#)

### Advocate General: managing collective investment vehicles in real estate should be VAT-exempt

On 20 May, CJEU Advocate-General Juliane Kokott issued her opinion on the Dutch preliminary ruling case C-595/13, Fiscale Eenheid, on the VAT taxable status of fees for property or asset management services rendered to a collective real estate investment fund. Up to now, such services are considered taxable. The exemption should apply provided the collective investment vehicle is under a national regulatory regime. The CJEU is not bound by the Advocate-General's opinion.

**READ MORE (click to open):**

- Opinion of Advocate-General Kokott: [Several EU languages](#), not EN

### Juncker announces proposal for reduced VAT for on-line content

In a speech delivered on 6 May 2015 at an event of the German association of newspaper publishers, European Commission President Jean-Claude Juncker announced that the European Commission will present a proposal including a reduced VAT rate for on-line books and newspapers, saying that the VAT rate should not depend on the technology used. Only in March 2015, Luxembourg and France had lost cases case before the ECJ concerning their introduction of a reduced VAT rate on e-books.

**READ MORE (click to open):**

- Text of the speech: [DE](#)

## OTHER TAX POLICY

### OECD reports on progress on developing a multilateral instrument

On 27 May 2015, the OECD started its work on developing a multilateral legal instrument to modify bilateral tax treaties (BEPS Action 15) which would become the key tool for implementing into national law the final BEPS recommendations expected in autumn 2015. Over 80 countries (including, i.a., Brazil, China, France, Germany, India, Italy, Japan, Russia, Spain and the UK, but not the US) are participating in this work. The substantive work on the instrument is only due to commence in November 2015. A number of international organisations will be invited to participate in the work as observers.

#### READ MORE *(click to open)*:

- OECD press release, 28 May 2015: [EN](#) (FR available)
- CFE Opinion Statement FC 15/2014 of December 2014 on a multilateral instrument to modify bilateral tax treaties: [EN](#)

## ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

### Switzerland publishes names of persons under tax investigations in other countries

According to the Swiss Sonntagszeitung, the Swiss tax administration has started publishing, in its federal gazette, names, birthdates and nationalities of persons about whom other tax administrations have requested data from their Swiss counterpart. The explanation given was that these persons will be able to seek legal remedy in Switzerland against the formal judicial assistance requests. Often, tax authorities are prohibited from informing directly the persons affected.

#### READ MORE *(click to open)*:

- Deutsche Welle article: [EN](#)

### Exchange of tax information: OECD issues compliance ratings on the Czech Republic and others

On 27 May 2015, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes published new compliance ratings from the Czech Republic, Kazakhstan and Morocco. The Global Forum's rating process consists of two phases: phase 1 evaluates the legal and regulatory framework for the information exchange while phase 2 assesses the exchange in practice. For the Czech Republic which received the overall rating "largely compliant", the process has been completed. Morocco and Kazakhstan finished the phase 1 review. While Morocco will move to phase 2, Kazakhstan is not yet ready for this step, as the legal framework for information exchange is considered insufficient.

#### READ MORE *(click to open)*:

- All compliance ratings (May 2015): [EN](#)
- Report on the Czech Republic: [EN](#)
- OECD press release, 27 May 2015: [EN](#) (FR available)

### EU and Switzerland sign exchange of bank account information agreement

On 27 May 2015, EU Commissioner Pierre Moscovici and the Swiss State Secretary for International Financial Matters, Jacques de Watteville, signed an agreement according to which EU member states and Switzerland will automatically exchange information on the financial accounts of each other's residents from 2018. The set of information to be exchanged is in accordance with the OECD Common Reporting Standard presented in 2014 and transposed into EU law in December 2014. Andorra, Liechtenstein, Monaco and San Marino are expected to sign similar agreements with the EU by the end of this year. The agreement also contains provisions to limit the possibility to escape from the reporting provisions by shifting assets or investing in products outside the scope of the agreement.

#### READ MORE *(click to open)*:

- European Commission press release, 27 May 2015: [EN](#)

## TAX TRANSPARENCY

### MEPs vote in favour of country-by-country reporting of information on tax payments and tax rulings

On 7 May 2015, the European Parliament's Legal Affairs (JURI) Committee voted in favour of an obligation on large undertakings and public-interest entities to publish information, country-by-country, on profit or loss before tax, taxes on profit or loss, and public subsidies received. Companies with more than 500 employees and a balance sheet total of €86 million or a net turnover of €100 million should also disclose information on tax rulings. Such requirements had not been included in the European Commission's initial proposal of 2014 to amend the Directive on the exercise of certain rights of shareholders in listed companies, but were introduced by members of the EP earlier this year. Indeed the result of JURI vote is contrary to the European Commission's announcement in its "Tax Transparency Package" of 18 March 2015 that introducing obligatory country-by-country reporting of tax information should be preceded by a careful impact assessment. Negotiations will start between members of the JURI Committee with the EU Council with a view to reaching a compromise at first reading. These discussions will not be public.

#### READ MORE (click to open):

- Voted text in JURI: [EN](#) (All EU languages)
- Euractive article, 8 May 2015: [EN](#)

### Australia to publish country-by-country information on income and taxes as of late 2015

Australia has passed a law according to which the total income, taxable income and income tax payable of companies, certain trusts and limited partnerships whose total income for that year exceeds AUD 100 million (approx. € 71 million) will be made public by the Australian Tax Office. The first data is expected to be released in late 2015, relating to the 2013-2014 financial year. In case of losses incurred, the relevant field would be left blank. Companies will also have the possibility to check upfront the accuracy of the data foreseen for publication. The rules are designed to discourage large corporate entities from engaging in aggressive tax avoidance.

### EU General Court: No public access to correspondence between Commission and member state in competition matters

On 12 May 2015, the EU General Court decided in the case Unión de Almacenistas de Hierros de España (T-623/13) that documents exchanged between the European Commission and a national competition authority in proceedings concerning an infringement of the competition rules are not, in principle, accessible to the public. Disclosure of those documents could undermine the protection of the commercial interests of the undertakings concerned as well as the protection of the purpose of investigations. This limits the right of any EU citizen or legal entity to access to EU documents which is as general rule contained in the Treaty on the Functioning of the EU and set out more in detail in an EU Regulation.

#### READ MORE (click to open):

- CJEU press release, 12 May 2015: [ES](#), [DE](#), [EL](#), [EN](#), [FR](#), [IT](#), [PT](#)
- Judgment: [Several languages](#), not yet in EN

## OTHER EU POLICY

### European Semester: Taxation and regulation of professional services part of many country-specific recommendations

On 13 May 2015, the European Commission published its annual country-specific recommendations issued in the context of the European Semester. The majority of recommendations includes changes to tax policy, mostly a shift of the tax burden from labour to areas considered less distortive to growth like recurring taxation of property, environmental taxes or consumption taxes (BE, DE, FR, IT, RO i.a.). Too generous tax expenditures have been addressed in the case of BE, DE, FR, IE and IT i.a., and specifically for VAT in IE, IT and PL i.a. Tax compliance was identified as a problem in CZ, IT, RO and SK, i.a., while in CZ and IT, the high costs of tax compliance have been mentioned. In several countries (AT, BE, DE, FR, IT, ES, i.a.), the Commission criticises a lack of competition and productivity and a high degree of regulation in professional services, citing qualification, ownership and legal form requirements and tariffs as obstacles. None of the recommendations mentions specifically tax advisers but some refer to lawyers. The Commission will ask the European Council in June to endorse the recommendations.

**READ MORE (click to open):**

- Country-specific recommendations, Commission press release, 13 May 2015: [EN](#) (FR available)
- All country-specific Commission recommendations, detailed Commission country reports and documents submitted by national governments: [EN](#) (Several languages available)

**PROFESSIONAL LAW****CFE comments on mandatory disclosure rules at OECD meeting**

On 11 May 2015, the Chairman of the CFE Professional Affairs Committee, Dick Barmiento and CFE Fiscal and Professional Affairs Officer Rudolf Reibel explained the AOTCA and CFE position on mandatory disclosure of certain tax planning schemes to the OECD and its member states at a public consultation meeting in Paris. The pleading put particular emphasis on taxpayer rights, in particular on the issues of self-incrimination and professional privilege.

**READ MORE (click to open):**

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

“legitimate interest” in the information. From the tax advisers’ perspective, the revision strengthens professional secrecy, improving the client’s access to tax advice and effective defence: Member states will have to exempt tax advisers from the obligation to report indications of money laundering and to lay down the mandate where the tax adviser receives the information from the client in the course of ascertaining the client’s legal position or defending or representing the client in judicial proceedings, provided that national law allows tax advisers to perform these activities. Under the current version of the Directive, this exemption is only optional. CFE has followed the legislative process by submitting three Opinion Statements to the European Institutions. CFE’s main aims were to strengthen professional privilege and to ensure that only illegal behaviour can constitute a predicate offence. Both aims were eventually achieved. The text was published in the EU Official Journal on 5 June 2015. Member states will have to implement the Directive by 26 June 2017.

**READ MORE (click to open):**

- Official Journal of 5 June 2015: [EN](#) (All EU languages)
- EP press release, 20 May 2015: [EN](#) (All EU languages)
- Text adopted: [EN](#)

**ANTI MONEY LAUNDRY****New Anti Money Laundering Directive adopted**

The European Parliament’s plenary, on 20 May 2015, formally adopted the compromise reached in December 2014 for a new (4th) Anti Money Laundering Directive. The new version obliges member states to keep central registers of information on the ultimate beneficial owners of corporate and other legal entities, as well as trusts. These central registers were not envisaged in the European Commission’s initial proposal, but were included by MEPs in negotiations. As concerns companies, these registers will be de facto public, as it will suffice to demonstrate a

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**IMPRESSUM**

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