European Tax Report
European Professional Law Report
November 2014

CFE EVENTS

Save the date: CFE Forum on 26 March 2015: "Tax governance and 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, and the new world that awaits us all.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: tax and tax governance will definitely have arrived in the boardroom. In a "post-BEPS" world, transfer pricing disputes as well as spill-over effects of double taxation and the degree of scrutiny of operations in general by tax administrations are expected to increase.The EU is fully supportive of the BEPS project and is working in parallel on its own programme tackling tax fraud and tax evasion. Close coordination between EU and OECD will be necessary to ensure that the adoption of OECD solutions does not hinder the exercise of the EU´s fundamental freedoms and that the changes put forward by the EU legislators do not damage the competitiveness of EU businesses.The forthcoming 2015 CFE Forum will address these pressing topics, and will help companies and their tax advisers prepare for the future.Further information will soon be available on the **CFE website**.

DIRECT TAX

France, Germany and Italy call for EU "Anti-BEPS Directive"

On 28 November 2014, the finance ministers of France, Germany and Italy sent a joint letter to EU tax Commissioner Pierre Moscovici, asking the Commission to propose a comprehensive EU Directive to counter BEPS (base erosion and profit shifting) by multinational enterprises. The Directive should contain a "general principle of effective taxation", according to which the benefits of the Parent-Subsidiary and the Interest & Royalties Directive should be denied if they do not lead to effective taxation. Member states should adopt this Directive by the end of 2015. The ministers express their support for the European Commission´s recent initiative to oblige member states to automatically exchange among each other information on international tax rulings, including transfer pricing matters. They also require registers of beneficial owners of companies, to be available to tax administrations.Other issues touched upon are patent box regimes, agreed counter-measures against tax havens and a common GAAR (general anti abuse rules).

READ MORE *(click to open):*

- Letter of 28 November 2014 : **EN**

BEPS: OECD consults on preventing tax treaty abuse

On 21 November 2014, the OECD has published a discussion draft on the prevention of tax treaty abuse (BEPS Action 6), as a follow-up to the OECD report of 16 September 2014 on this topic. The new discussion draft deals in particular with the limitation of benefits (LOB) rule, as well as with issues related to the treaty entitlement of collective investment vehicles (CIVs) and non-CIV funds. Comments are invited until 9 January 2015.

READ MORE *(click to open):*

- News release: **EN** (FR available)
- BEPS 6 follow-up Discussion Draft, 21 November 2014: **EN**
- Report of 16 September 2014 on BEPS Action 6: **EN**

Commission publishes review of taxes on wealth and transfer of wealth

On 20 November 2014, the European Commission published a comprehensive cross-country study on taxes on wealth and transfer of wealth in the EU member states, including inheritance and gift taxes, real estate and land taxes and net-wealth taxes. While inheritances are taxed in 20 member states, gifts in 21 and real estate in every member state, taxes on net-wealth are rare. Though several countries have "environmental" taxes on the possession of certain assets, only three member states use net-wealth as a tax base.The Commission also made available the presentations given at its ECFIN workshop of 17 November 2014 in Brussels.

READ MORE *(click to open):*

- Review on wealth taxation: **EN**
- Presentations from ECFIN workshop, 17 November 2014: **EN**

Commission publishes study on effective tax rates in EU and other countries

On 20 November 2014, the European Commission published a study by the German think tank ZEW (Zentrum für Europäische Wirtschaftsforschung / Centre for European Economic Research) on the effective tax rates in EU countries, including also Canada, Japan, Macedonia, Norway, Switzerland, Turkey and the United States. The report considers primarily taxes on corporations, but also includes analyses of personal taxes on investment and saving. It also considers both cross-border investment and investment by small and medium sized enterprises.

READ MORE *(click to open):*

- ZEW report on effective tax rates: **EN**

UK and Germany reach compromise over patent boxes

The finance ministers of Germany and the UK have reached an agreement not to extent special regimes providing for low taxation of income from intellectual property (so-called patent boxes) beyond 2020, according to media reports. The UK has introduced such tax incentive in 2013. In the future, the use of patent boxes should require more economic substance in the country.

READ MORE *(click to open):*

- Financial Times article, 12 November 2014: **EN**
- Handelsblatt article, 10 November 2014: **DE**

Commission refers Spain to CJEU for discriminatory tax treatment of investments in non-resident companies

On 26 November 2014, the European Commission decided to refer Spain to the EU Court of Justice to ensure that the Spanish legislation on taxation of investments in non-resident companies complies with EU law. Under the Spanish provisions, the tax treatment for foreign-sourced dividends (i.e. dividends distributed by a non-resident company to a Spanish company) is more burdensome than the one applied to domestic-sourced dividends (i.e. dividends distributed by companies resident in Spain), as further conditions, e.g. on volume of income and level of shareholder participation, must be met in order to benefit from the tax advantage.

READ MORE *(click to open):*

- Press release: **EN** (DE, ES, FR available)

Commission takes Spain to Court for discriminatory inheritance tax treatment of public debt bonds

On 26 November 2014, the European Commission decided to refer Spain to the CJEU to ensure that the inheritance and gift tax legislation of the Spanish territory of Bizkaia complies with EU law. Under these provisions, public debt issued by the local administrations benefits from a preferential inheritance tax treatment compared to that applied to similar titles issued in other EU/EEA states.

READ MORE *(click to open):*

- Press release: **EN** (DE, ES, FR available)

Commission asks Romania to stop discriminatory treatment of non-residents receiving income from Romania

On 26 November 2014, the European Commission requested Romania to amend its rules on the taxation of income from independent activities of non-residents. In Romania, resident individuals receiving income from Romania can deduct the related business expenses, which is not possible for individuals residing in another EU/EEA state, unless they have a permanent establishment in Romania. The Commission considers that this constitutes a restriction to the freedom to provide services and to the free movement of capital for which it sees no valid justification. The request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer the matter to the EU Court of Justice.

READ MORE *(click to open):*

- November infringement package: **EN** (several languages available)

CJEU dismisses different treatment of gains attributed to participators in non-resident companies by UK law

On 13 November 2014, in an infringement proceeding of the European Commission against the UK (C-112/14), the EU Court of Justice concluded that, by adopting and maintaining tax legislation concerning the attribution of gains to participators in non-resident companies which treats domestic and cross-border activities differently, the UK has infringed the free movement of capital.

READ MORE *(click to open):*

- Judgment : **EN** (FR available)

BEPS: OECD proposes modifications to Transfer Pricing Guidelines relating to low value-adding intra-group services

On 3 November 2014, the OECD has published a discussion draft on amending the provisions applying to low value-adding intra-group services in the Transfer Pricing Guidelines, which forms part of BEPS Action 10. The consultation is open until 14 January 2015 (see **CFE European Tax & Professional Law Report October 2014**).

READ MORE *(click to open):*

- News release: **EN** (FR available)
- Discussion draft: **EN**, **FR**, **ES**

Tax Commissioner Moscovici hints at a compulsory CCCTB

In a speech given at the European Parliament on 13 November 2014, the new Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici confirmed his determination to pursue the fight against tax fraud, evasion and avoidance, which he called his priority. The speech also contains a hint at the possibility to make the CCCTB (common consolidated corporate tax base), proposed by the Commission in 2011, mandatory, and mentions the automatic exchange of tax rulings as a possible way forward.

READ MORE *(click to open):*

- Speech before the European Parliament on 13 November 2014: **EN/FR**

Council adopts minimum GAAR in Parent- Subsidiary Directive

On 7 November 2014, the EU Ecofin Council discussed a compromise text for including a general anti-abuse rule (GAAR) in the EU Parent-Subsidiary Directive. The text, proposed by the Italian Council Presidency, suggests a GAAR that denies the benefits of the Directive to all arrangements that have been put in place mainly to obtain a tax advantage which defeats the object or purpose of the Directive and which are not genuine, meaning lacking valid economic reasons which reflect economic reality. The rule would only provide for minimum harmonisation, allowing member states to maintain in place stricter rules against fraud, evasion or abuse. The text was finally adopted on 9 December 2014.

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

- Press release of 7 November (see p.8): **EN**
- Text of the amendment: **EN**
- Press release of 9 December 2014: **EN**

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

- News release: **EN** (FR available)
- Statistics: **EN** (FR available)

Dutch Court of Audit reports figures on development of dividend, royalty and interest payments flowing through the Netherlands

On 6 November 2014, the Court of Audit of the Netherlands reported figures on the development of money flows through so-called special financial institutions (SFI) which transfer dividends, interest and royalties from a company in a foreign country to a company in another foreign country:Dividend payments into SFIs increased from € 13.1 billion (2004) to € 72.7 billion (2012), outgoing dividend payments from € 25.6 billion to € 53.7 billion. The tax on dividends in the Netherlands has decreased to 15% in 2007, is in line with the European trend. € 2.2 billion in dividend taxes were collected in 2013.Royalty payments into SFIs increased from € 5.4 billion (2003) to € 18.5 billion (2012). Royalties exiting the Netherlands grew from € 4.4 billion to € 13.3 billion. Royalties are not taxed in the Netherlands.As to interest payments, figures doubled in roughly the same period.

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

- Report: **NL**
- Article by EU Observer: **EN**

OECD publishes 2013 MAP statistics

On 25 November 2014, the OECD has published its statistics on mutual agreement procedures (MAP) opened, pending or concluded in 2013. Statistics show that the number both of new and pending cases has almost doubled since 2006, with a sharp increase in 2013. The average reported cycle time for cases completed, closed or withdrawn shows a slight decrease from 25.46 months in 2012 to 23.57 months in 2013, but no long-term trend can be observed.Action 14 of the OECD BEPS Action Plan aims to make dispute resolution more effective.

Commission takes Greece to Court over registration tax for leased or rented cars

On 26 November 2014, the European Commission decided to refer Greece to the EU Court of Justice (CJEU) for its failure to amend the registration tax rules for vehicles leased or rented to Greek residents by non-Greek lessors. Under Greek law, if a customer resident in Greece leases or rents a vehicle from a lessor established in another EU member state, registration tax needs to be paid in Greece in full. Greece has not addressed the issue of cross-border leasing or renting of cars in its legislation, disregarding CJEU case-law (C-451/99 Cura Anlagen and C-91/10 VAV Autovermietung) that requires member states, in the case of cross-border leasing or rent, to levy a tax proportionate to the duration of the use of the vehicle. This may act as a deterrent to cross-border activity, against the principles of free movement of services. The Commission had sent a reasoned opinion on this matter to Greece in November 2012 (see **CFE European Tax & Professional Law Report November 2012**).

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

- Press release: **EN** (DE, EL, FR available)

CFE comments on CJEU judgments in cases DMC and SCA Group Holding

At its meeting on 20 November 2014, the ECJ Task Force of the CFE adopted positions on two EU Court of Justice judgments: Opinion Statement ECJ-TF 3/2014 concerns the taxation of unrealized gains upon a reorganisation within the EU, commenting on the judgment of 23 January 2014 in the case C-164/12, DMC. The Court supported the right of Germany to tax unrealised gains on interests in a German limited partnership as a result of its transfer to a German limited company by its two Austrian limited partners, thus resulting in the dissolution of the limited partnership. The Statement ECJ-TF 4/2014 concerns the requirements to form „fiscal unity“ under Dutch law, referring to the judgment of 12 June 2014 on joined cases C-39, 40 and 41/13, SCA Group Holding B.V. et al. “Fiscal unity” allows for the consolidation of profits and losses. The question in the cases at issue was whether two Dutch companies qualify for this regime where they either have an intermediate company in another member state or where they are sister companies of the same parent company established in another member state.

READ MORE *(click to open):*

- Opinion Statement ECJ-TF 3/2014: **EN**
- Opinion Statement ECJ-TF 4/2014: **EN**

INDIRECT TAX

Contact points for 2015 VAT changes

The European Commission has published a list of national contact points for any questions of operators regarding the 2015 changes to VAT on electronic, telecommunication and broadcasting services.

READ MORE *(click to open):*

- List of national contact points: **EN**

EU Finance Ministers report on progress on FTT

After the EU Ecofin Council meeting of 7 November 2014, progress was reported on the planned EU Financial Transaction Tax, to be adopted by a group of 11 EU member states (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain), using the “enhanced cooperation” mechanism. Ministers have agreed that the tax, as a first step from the beginning of 2016, should apply to shares of companies listed at a stock exchange and possibly be extended to derivatives in a second step. Discussions on the types of derivatives to be included are ongoing.

READ MORE *(click to open):*

- Council press release (p.9), 7 November 2014: **EN**
- Italian Council Presidency report: State of play, 04 December 2014: **EN**

Derogation from rules on VAT deduction for cars in Estonia

The EU Ecofin Council has authorised Estonia to derogate from the VAT Directive as concerns the right to deduct VAT in relation to passenger cars, enabling the country to limit to 50% the right to deduct VAT on expenditure on passenger cars not wholly used for business purposes. Such expenditure covers the purchase, leasing, intra-EU acquisition and import of passenger cars, as well as related expenditure such as the purchase of fuel. The Council decision will apply until 31 December 2017.

READ MORE *(click to open):*

- Press release: **EN** (p.18)

VAT derogation for small businesses in Latvia and Lithuania

On 7 November 2014, the EU Ecofin Council authorised Latvia and Lithuania to continue exempting small businesses from VAT payments under certain conditions. The measures exempt taxable persons whose annual turnover is no higher than € 50,000 and € 45,000 respectively. The derogations will apply until 31 December 2017.

READ MORE *(click to open):*

- Press release: **EN** (p.17)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

Switzerland signs agreement on automatic exchange of information

On 19 November 2014, Switzerland has signed, as the 52nd country, the "multilateral competent authority agreement" (see **CFE European Tax & Professional Law Report October 2014**), dealing with the practical implementation of the OECD global standard on automatic exchange of financial information in tax matters. The decision is still subject to parliamentary approval and possibly a plebiscite.

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

- News release: **EN/FR**
- Information on the multilateral competent authority agreement on OECD website: **EN**

G20 endorse OECD work on BEPS and automatic exchange of information

The G20 leaders endorsed a "G20 Leaders Communiqué" at their summit in Brisbane on 16 November 2014, supporting the OECD work on reforming the international tax system, in particular the BEPS project and the global automatic information exchange standard. The Communiqué mentions that profits should be taxed where economic activities deriving the profits are performed and where value is created. The G20 leaders also declared that they commit themselves to finalising, in 2015, work on transparency of taxpayer-specific rulings found to constitute harmful tax practices.This is complemented by a report of the OECD providing an update on BEPS, the global automatic information exchange standard, tax and development and the ongoing monitoring work of the OECD´s Global Forum on Transparency and Exchange of Information for Tax Purposes which has to date assessed the compliance of 105 jurisdictions with the international standard on exchange of information on request and has started working on including beneficial ownership in the standard, before commencing implementation of the new automatic exchange of information standard.

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

- G20 Communiqué, 16 November 2014 (see paragraph 13): **EN**
- OECD General-Secretary Report to G20 leaders: **EN**

OTHER TAX POLICY

OECD invites developing countries to play greater role in BEPS

On 12 November 2014, the OECD released a strategy for better involving developing countries in the decision-making processes and the technical work to counter corporate base erosion and profit shifting and other issues of particular importance to these countries, such as tax incentives and transfer pricing comparable data. This should be achieved by inviting developing countries to participate in meetings of the OECD Committee on Fiscal Affairs and its technical working groups and by establishing five regionally organised networks of tax policy and administration officials, to coordinate a dialogue with further developing countries on BEPS issues. The regional networks will also play an important role in capacity-building through the development of toolkits to support the practical implementation of the BEPS measures and non-BEPS priority issues for developing countries. A two-part report on BEPS problems faced by developing countries by the G20 was presented in September 2014 (see **CFE European Tax & Professional Law Report August/September 2014**).

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

- News release: **EN** (FR available)
- Strategy paper: Deepening Developing Country Engagement: **EN**

STATE AID

"Luxembourg leaks": journalists publish confidential tax rulings

For the article on "Lux leaks" see **CFE European Tax & Professional Law Report October 2014**

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

- News release on ICIJ.org: **EN**
- Luxembourg leaks Database: **EN**

Dutch tax ruling on Starbucks: Commission publishes text of decision to open state aid investigations

On 14 November 2014, the European Commission published the non-confidential version of its decision of 11 June 2014 to open an in-depth investigation into transfer pricing arrangements of Starbucks in the Netherlands.

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

- Letter sent to the Netherlands: **EN**, **NL**

EU General Court: Spanish tax rule allowing for the deduction of goodwill from the acquisition of shareholdings in foreign companies was not state aid

On 7 November 2014, the EU´s General Court annulled two decisions by the European Commission of 2011, classifying a Spanish tax rule which allowed for the deduction from the corporation tax base of goodwill for the acquisition of a shareholding in a foreign company of at least 5% as staid aid (T-219/10 and 399/11, Autogrill España and Banco Santander). The Court held that the Commission has not sufficiently established that the Spanish tax measure had been selective. Indeed the undertakings affected did not share any specific characteristic distinguishing them from other undertakings, apart from the fact that they would be capable of satisfying the conditions to which the grant of the measure is subject.

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

- Press release: **EN**
- Judgment: **EN**

OTHER EU POLICY

Commission to publish its meetings with lobbyists

On 25 November 2014, the European Commission decided new transparency rules that are effective as of 1 December 2014. According to these, Commissioners, their cabinet members and Directors-General will have to disclose bilateral meetings with lobbyists (in the sense of organisations and self-employed individuals in the EU Transparency Register) as well as the subjects of these meetings on the Commission´s website, within two weeks of each meeting. For 2015, the Commission announced a proposal for an interinstitutional agreement with the European Parliament and the EU Council to create a mandatory register for lobbyists covering all three institutions. The current Transparency Register does not cover the EU Council. CFE is registered in the EU Transparency Register.

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

- Press release: **EN** (all EU languages)

CFE EVENTS

CFE PAC Conference "Tax Transparency - How to make it work?"

72 tax professionals from all over Europe, representatives from several tax administrations, the OECD, the European Parliament, academics and staff of tax professional and trade associations took part in the 7th Professional Affairs Conference of CFE on 5 December 2014 in Paris which was co-hosted by the French Institut des Avocats Conseils Fiscaux (IACF). The conference consisted of three panels, each dealing with one topical aspect of tax transparency: country by country reporting of tax information, initiatives

to introduce mandatory disclosure of tax avoidance schemes and cooperative compliance models, namely the "relation de confiance" pilot project of the French tax administration. The presentations of the speakers will shortly be available on the CFE website.

READ MORE *(click to open)*:

- 7th PAC Conference website: **EN**

IMPRESSUM

CONFEDERATION FISCALE EUROPEENNE

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