



European Tax Report Confédération Fiscale Européenne (CFE)

February 2011 / Edition 2

CFE FORUM 2011

CFE Forum on Permanent Establishment on 7 April 2011 in Brussels

The CFE would like to invite you to its Forum, an annual international full-day tax conference, this year devoted to Permanent Establishment.

Permanent Establishment is a vital concept in international taxation. While for direct taxes, it is mainly defined by the OECD Model Convention, the European VAT Directive and its implementing Regulation provide an EU-wide approach for VAT.

Difficulties arise as terminology and definitions in indirect and direct tax diverge. Moreover, countries have implemented and interpreted the EU and OECD rules in a different way, impacting on issues like cross-border reorganisations, transfer pricing, taxation of dividends and interest and royalties, tax residence, temporary and permanent transfer of assets, place of supply and VAT liability.

In both direct and indirect tax, the concept of Permanent Establishment has undergone very recent changes: The 2010 changes to the OECD Model Convention and Commentary, and in particular the new Art. 7, will be adopted in national law, as speakers from the Netherlands and Germany will report. The effect of the new definition on treaties with other countries will also be considered.

In indirect tax, the discussion will deal with the practical consequences of the adoption of the Regulation implementing the EU VAT Directive in January 2011.

The CFE Forum will provide a clear picture of the latest developments and their practical implications for both direct and indirect tax specialists.

READ MORE (click to open):

Invitation: [EN](#)

NEWS - DIRECT TAX

Ernst & Young publishes CCCTB-critical study for Irish business organisation

The Irish Businesses and Employers Confederation (IBEC) published a critical study on the introduction of a CCCTB undertaken for them by Ernst & Young. The study expects a 13% increase in compliance costs through the introduction of a CCCTB for the five model companies scrutinised. It should however be noted that the study is not based on the recent Commission considerations but on their 2008 working papers.

READ MORE (click to open):

E&Y report for IBEC: [EN](#)

Summary in E&Y tax alert No.160: [EN](#)

Council re-addresses Savings Tax Directive

The Ecofin Council of 15 February 2011 discussed the strengthening of the rules of the Savings Tax Directive 2003/48/EC. This is envisaged through extending its scope to all savings and similar income to avoid circumvention. The current Directive obliges member states to exchange information on interest payments so that interests can be taxed according to the law of the taxpayer's state of residence. Austria and Luxembourg however temporarily enjoy exceptional treatment as they may apply a withholding tax instead.

READ MORE (click to open):

Council press release (p.9): [EN](#) [FR](#)

Council adopts conclusions on business taxation code of conduct

On 15 February 2011, the Ecofin Council adopted conclusions on the code of conduct for business taxation. The code of conduct is a non-binding document that serves to avoid harmful tax competition between EU member states in direct tax for businesses. Among the conclusion adopted was that exceptionally, certain aspects of personal income tax may be taken into account and that the Isle of Man and Jersey fall under the scope of the code.

READ MORE (click to open):

Council press release (p.16 f): [EN](#) [FR](#)

Commission requests Spain to change its discriminatory inheritance and gift tax provisions

On 16 February 2011, the European Commission requested Spain to amend its tax provisions on inheritance and gift tax that impose a higher tax burden on non-residents and on assets held abroad. Inheritance and gift tax in Spain are regulated at both state level and at the level of Comunidades Autónomas while in practice, the legislation of the Comunidades Autónomas leads to a substantially lower tax burden for the taxpayer than the state legislation does. When the gift or inheritance does not fall within the jurisdiction of a Comunidad Autónoma, only the state legislation applies. This is particularly the case where the recipient is resident abroad or when gifts of property are located abroad. As a consequence, the taxpayer has to pay more taxes than if he/she had been living in Spain or if the property was located in Spain. The Commission considers that this constitutes an obstacle to free movement of persons and capital in breach of the Treaty on the Functioning of the EU (Art. 45 and 63). After the Commission sent a reasoned opinion to Spain in May 2010, (see [CFE European Tax Report 5/2010](#)), the Spanish legislation has been amended but is still not to the Commission's satisfaction. The Commission has therefore decided to send a complementary reasoned opinion. If there is no satisfactory response within two months, the Commission may take the case to the ECJ.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [ES](#)

Commission requests Greece to end discriminatory tax amnesty

On 16 February 2011, the European Commission formally requested Greece to change its tax legislation which discriminates against funds held abroad by Greek residents. Under the temporary Greek tax amnesty, voluntarily disclosed funds which are transferred to a bank account in Greece for at least a year benefit from a lower rate of tax than those kept abroad. The difference is a tax rate of 5% for funds paid to a Greek account compared 8% for funds maintained out of Greece. The Commission considers these discriminatory provisions to be incompatible with the freedom to provide services and with the free movement of capital provided for in Art.56 and 63 in the Treaty on the Functioning of the EU and in the corresponding Articles of the EEA Agreement. The request takes the form of a reasoned opinion. If there is no satisfactory response within two months, the Commission may refer the case to the EU Court of Justice.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [EL](#)

Commission requests France to amend discriminatory tax rules for investments in residential property to let

On 16 February 2011, the European Commission formally requested France to amend provisions which allow investments in new residential property situated in France to benefit from accelerated depreciation, but do not allow the same for similar investments abroad. The French tax provisions (known as amortissement Périssol, amortissement Besson, amortissement de Robien and amortissement Borloo neuf) allow accelerated depreciation to be applied to new residential property in France which is intended for letting for a minimum of 9 years. This results in favourable tax treatment for these investments. The Commission considers such provisions to be incompatible with the free movement of capital (Art.63 TFEU). The request takes the form of a reasoned opinion (the second step of an infringement procedure). In the absence of a satisfactory response within two months,

NEWS - DIRECT TAX

the Commission may refer France to the ECJ. In a similar case decided in 2009, the ECJ (C-35/08, Busley) confirmed that such discriminatory tax treatment is in breach of EU rules on the free movement of capital.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#)

Commission requests Belgium to amend its provision on taxation of gifts of real estate in Brussels

On 16 February 2011, the European Commission has formally requested Belgium to change the provision of the Inheritance Tax Code of the Brussels Capital Region which provides for a reduced tax rate on gifts of real estate in the Brussels Capital Region from which only persons who have lived in Brussels for at least five years can benefit. The Commission considers that this condition restricts the freedom of residence, the free movement of workers and the right of establishment as laid down in Art.21, 45 and 49 of the Treaty on the Functioning of the EU and Art.28 and 31 EEA Agreement as such provisions could dissuade Belgian residents from moving or investing in other member states. The request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer Belgium to the ECJ.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [NL](#)

Commission requests UK to amend two anti-abuse tax regimes

On 16 February 2011, the European Commission has formally requested the United Kingdom to amend two discriminatory anti-abuse tax regimes which concern the transfer of assets abroad and attribution of gains to members of non-UK resident companies. According to the first contested piece of legislation, a UK resident individual who invests in a company incorporated and managed in another member state by transferring assets to it is subject to tax on the

income generated by this company. However, if the same transaction concerned a UK company, only the company itself would be liable for tax.

The second contested rule concerns the attribution of gains to shareholders of non-UK resident companies. Under this legislation, the gains of a UK-resident company that acquires more than a 10% share of a company in another member state that realises capital gains from the sale of an asset are immediately attributed to the UK company which becomes liable for corporation tax on these capital gains. By contrast, if the UK company had invested in another UK resident company, only the latter would be taxable on its capital gains.

In both cases, the Commission considers there to be discrimination as investments outside the UK are taxed more heavily than domestic investments. This treatment affects the freedom of establishment and the free movement of capital (Art.49 and 63 TFEU). The Commission is of the opinion that both restrictions are disproportionate, in the sense that they go beyond what is reasonably necessary to prevent abuse or tax avoidance and any other requirements of public interest.

The requests take the form of reasoned opinions, the second step of an infringement procedure. In the absence of a satisfactory response within two months, the Commission may refer the UK to the ECJ.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#)

NEWS - INDIRECT TAX

Centralised import VAT collection – Commission publishes results of public consultation

In autumn 2010, the Commission held a public consultation about the simplification of VAT collection procedures in relation to centralised customs clearance. The summary report of the consultation was published on 22 February 2011. According to the report, the vast majority of respondents favoured amendments to the relevant VAT collection rules, expressing preference for a centralised scheme where an importer would only have to deal with the tax authorities of his country. Import VAT and customs duties should be dealt with in one declaration. See also [European Tax Report 7/2010](#), p.2.

NEWS - INDIRECT TAX

READ MORE (click to open):

Summary report: [EN](#) [FR](#) [DE](#)

CFE submits two Opinion Statements in VAT matters

The CFE has submitted observations in two aspects of VAT to the European institutions: One concerns problems for businesses through application of the reverse charge procedure (Opinion Statement on the persons liable for the payment of VAT) and the other relates to missing trader fraud and the practical implications of the ECJ's Kittel judgment and similar recent case-law for businesses.

READ MORE (click to open):

CFE Opinion statements
Missing trader fraud: [EN](#)
Person liable to VAT: [EN](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

Recast of Directive on Administrative Cooperation adopted

On 15 February 2011, the Ecofin Council adopted the new Directive on Administrative Cooperation in the field of Taxation, fundamentally revising Directive 1977/799/EEC. The Directive covers all taxes not regulated by specific EU law provisions (like VAT).

The Directive establishes at EU level the OECD standard for information on request that information can no longer be withheld on grounds of bank secrecy. To avoid so-called "fishing expeditions", the requesting member state must name the identity of the taxpayer and the tax purpose for which the information is relevant. The Directive also introduces time limits for responses; the absence of such time limits has been viewed as a severe shortcoming of the existing Directive. Requests will have to use defined formats and communication channels.

Automatic exchange of available information will start as of 2015 and concerns five categories of income and capital: Income from employment, directors' fees, certain life insurance products, pensions, ownership of immovable property and income therefrom. This list may in 2017 be extended to eight categories (with dividends, capital gains and royalties to be added) without condition of availability.

Furthermore, the new Directive will allow revenue officials of one member state to participate in investigations by another member state.

READ MORE (click to open):

Council press release (p.16): [EN](#) [FR](#)

Text of the Directive: [EN](#) (available in 23 language versions)

Council debates agreements with Switzerland and smaller European states

The Ecofin Council of 15 February 2011 also debated a draft anti-fraud and information exchange agreement with Liechtenstein covering both direct and indirect tax. Information shall be exchanged if "foreseeably relevant" to tax administrations and cannot be refused on grounds of bank secrecy. Also legal assistance would have to be granted and, for severe offences, implementing measures such as seizures.

This agreement could serve as a model for future agreements with Andorra, Monaco and San Marino yet to be negotiated by the Commission. For Switzerland, the existing agreement on indirect taxation could be extended to direct taxation.

READ MORE (click to open):

Council press release (p.9): [EN](#) [FR](#)

OECD publishes report on disclosure initiatives against aggressive tax planning

Please see [CFE European Tax Report 1/2011](#).

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

Eurofisc takes up work

On 7/8 February 2011, the European anti-tax fraud network Eurofisc started its operational work. Eurofisc has been created through the Regulation on Administrative Cooperation and Combating VAT Fraud (EU) 904/2010 of 7 October 2010 (see [CFE European Tax Report 8/2010](#)) to improve administrative cooperation to combat organised VAT fraud, namely carousel fraud.

READ MORE (click to open):

Eurofisc press release: [EN](#) [FR](#) [DE](#)

EU INSTITUTIONS

ECJ has never been quicker and busier

In 2010 alone, 1406 cases were brought before the European Court of Justice. This number includes the European Court of Justice itself (574 completed and 631 new cases, 61% of which were requests for preliminary rulings), the General Court (formerly named the Court of First Instance: 527 completed and 636 new cases) and the Civil Service Tribunal for staff cases. In spite of these record numbers, the Court of Justice and the General Court have succeeded in reducing the average duration of procedures: Direct actions before the Court of Justice take 16.7 months (0.4 months less than in 2009) and appeals 14.3 months (1.1 month less). Before the General Court, procedures take 24.7 months which is 2.5 months quicker than in 2009.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [IT](#) [ES](#) [NL](#) [PL](#) [RO](#)

OTHER TAX POLICY

Commission opens consultation on financial sector taxes

On 22 February 2011, the European Commission opened a public consultation on financial sector taxation. The questions relate to possible Financial Transaction Taxes (FTT), Financial Activities Taxes (FAT) and bank levies but not to the use of the revenues derived from such sources. The 57-question paper starts off with asking general questions on the contribution of the financial sector or some of its activities to the economic crisis and whether new taxes on the sector or particular activities should be introduced, subsequently addressing specific designs of FTTs (broad-based vs. narrow-based), FATs (addition method, rent-taxing or risk-taxing) and levies (asset-based or risk-based) and their expected effectiveness.

The consultation will be open until 19. April 2011.

READ MORE (click to open):

More information: [EN](#) [FR](#) [DE](#)

Consultation paper: [EN](#)

Commission publishes study on the role of environmental taxes in innovation

A study on the role of taxes in innovation in energy technologies carried out by the think tank Copenhagen Economics was published on 23 February 2011 by the European Commission.

READ MORE (click to open):

Study: [EN](#)

IMPRESSUM

CONFEDERATION
FISCALE
EUROPEENNE

Confédération Fiscale Européenne
188A, Av. de Tervuren
B-1150 Brussels

Editor: Rudolf Reibel, LL.M., CFE Fiscal and Professional Affairs Officer

If you have any suggestions or questions, please feel free to contact the editor:
brusselsoffice@cfe-eutax.org

Layout: Laëtitia Bois, Administrative Assistant

Disclaimer: The Confédération Fiscale Européenne (CFE) distributes this report to enhance public access to information about European policies in general. The CFE accepts no responsibility or liability whatsoever with regard to the material. The links will connect you to sites which are in no way controlled by the CFE, and CFE is not responsible for their content, or indeed for any further links which they may support.
All rights reserved.