



## EDITORIAL NOTE

As of this issue, the CFE European Tax Report and the CFE European Professional Law Report are merged. This will have the advantage that developments in professional affairs will now be reported on a monthly basis instead of only two or three times per year. The layout has been maintained. Tax-related headings now have a red background while headings concerning professional affairs have a blue background. This issue focuses on the events in taxation in December 2011 and in professional affairs since July 2011.

## CFE EVENTS

### Save the date: CFE Forum 2012 on 19 April in Brussels

Information on the programme will be available soon.

### CFE Professional Affairs Conference discusses how tax advice should be regulated in the future

The 4th CFE Professional Affairs Conference took place in Brussels on 29 November 2011 dealing with with regulation of the tax profession at national level and recent developments in EU legislation and ECJ case-law that may impact on regulation. Among other speakers, Martin Frohn from Directorate-General Internal Market explained the functioning of the Services Directive and the Commission's view on the justification of existing regulation at national level, e.g. on shareholding and professional indemnity insurance while Brian Redford from the UK tax administration reported on the "tax agent strategy" pursued by his administration. This strategy relies on increased monitoring possibilities of the administration but refrains from introducing professional regulation. The conference was kindly hosted by the Belgian Institute of Accountants and Tax Advisers. A report from the conference and the presentations of the speakers are available on the CFE website.

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

Report and presentations: [EN](#)

Picture: [EN](#)

## NEWS - DIRECT TAX

### Commission issues Recommendation on double taxation of inheritances

In response to the increasing number of cross-border inheritance tax cases resulting from the citizens' and companies' exercise of the EU freedoms and to the absence of a double tax treaty network in inheritance tax, the European Commission issued a Recommendation and a Communication on 15 December 2011, supported by further documents, proposing a set of criteria for member states to resolve inheritance tax cases in cross-border situations. The criteria determine which member state should enjoy priority while the other shall grant relief for the amount of tax paid to the first state. This does not prevent tax disadvantages from cross-border mobility but would prevent excessive taxation. The criteria would also apply to gift tax where gifts are treated like inheritances.

According to these criteria:

- immovable assets and movable business property of a Permanent Establishment shall be primarily taxed where the asset or the PE are located,
- where only one member state has a personal link to the deceased or the heir, this state should be entitled to tax first;
- member states that have a personal link to the heir should leave precedence to member states that have a personal link to the deceased;
- where a person has personal links to more than one member state, the closest personal link would be the person's permanent home, followed by the personal and economic relations, habitual residence and lastly nationality.

Stressing the member states' competence in inheritance tax, the paper suggests that the member states should act in agreement but does not propose

a binding settlement procedure. The Commission announces an evaluation in three years time to consider the necessity of further measures.

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

Press release: [EN](#) (available in several languages)

Cummunication: [EN](#)

Recommendation: [EN](#)

Working Paper: [EN](#)

FAQ: [EN](#)

Impact Assessment: [EN](#)

Citizens Summary: [EN](#) [FR](#) [DE](#) [BG](#) [CS](#) [EL](#) [ES](#) [IT](#) [LV](#) [MT](#) [NL](#) [PL](#) [PT](#) [RO](#) [SK](#) [SL](#) [FI](#)

### **Foggia case: ECJ rules that advantages of Tax Merger Directive can be denied if merger mainly aims at tax advantage through utilisation of losses**

On 10 November 2011, the European Court of Justice delivered its judgment in the Foggia case, C-126/10. The Court held that Portugal may refuse to grant the benefits of the Tax Merger Directive (90/434/EEC) in the case of a merger between two companies of the same group of which the acquired company does not carry out any activity, does not have any financial holdings and transfers to the acquiring company only substantial tax losses of undetermined origin. Denying the tax advantage can be justified to prevent tax evasion or avoidance. The fact that the merger may generate administrative or management cost savings does not constitute the required "valid commercial reason". It is now up to the referring Portuguese court to establish whether the facts of the case suggest a case of tax evasion or avoidance.

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

Judgment: [EN](#) (available in several languages)

### **BBVA case: ECJ allows limitation of deduction of corporation tax that is exempt in another member state**

On 8 December 2011, the European Court of Justice delivered its judgment in the case C 157/10 (Banco Bilbao Vizcaya Argentaria) stating that the Spanish corporation tax regime could prohibit the deduction of amounts of tax due in other member states on income subject to corporation tax and obtained in their territory where those amounts, although due, are not paid by virtue of an exemption, a credit or any other tax benefit. This applies in so far as the rules are not discriminatory compared to the treatment applied to interest obtained in that member state.

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

Judgment: [EN](#) (available in several languages)

### **Parent-Subsidiary Directive recast to enter into force**

On 30 November 2011, the EU Council adopted the recast of the Parent-Subsidiary Directive proposed by the Commission in early 2011. The recast does not contain any substantive changes. The Council did not take on the European Parliament's suggestion that a minimum taxation of 70% of the average EU corporate tax rate be introduced to prevent profit-shifting to low tax jurisdictions (see [CFE European Tax Report 9/2011](#)). The new Directive will apply as of 18 January 2012.

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

Official Journal of 29 December 2011: [EN](#) (available in several languages)

### **Committee of the Regions critical towards CCCTB**

On 14 December 2011, the EU's Committee of the Regions (CoR) adopted an opinion on the CCCTB proposal from the European Commission. The rapporteur was Mr Gusty Graas (ALDE, Luxembourg). The document calls into question main elements of the Commission's proposal:

The CoR believes that a voluntary CCCTB would lead to the fall of GDP and employment in 21 countries and the distribution formula proposed by the Commission would lower tax revenues in 11 member

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states. Harmonisation of the tax base would lead to an approximation of tax rates and therefore a minimum corporate tax rate is considered. Furthermore, the CoR is worried of the impact on the revenues from local and regional taxes and demands an in-depth analysis.

Although acknowledging that the solution of transfer pricing and loss compensation issues would be beneficial for companies, the CoR is concerned that companies could abuse the indefinite carry-over of losses and sees an increase of administrative effort because companies will constantly compare the CCCTB to domestic regimes. It therefore considers making the CCCTB mandatory at least for larger companies. The one-stop-shop approach is generally favoured but the CoR stresses that it should not allow companies to randomly choose their tax domicile. Lastly, the inclusion of partnerships in the CCCTB should be considered.

The decision of the CoR is not binding. CFE Fiscal Committee Chairman Gottfried Schellmann had been invited to an expert hearing at the CoR on 11 July 2011.

### READ MORE (click to open):

CoR Opinion: [EN](#)

CCCTB Proposal: [EN](#) (available in several languages)

## NEWS - INDIRECT TAX

### Commission publishes VAT communication as a follow up to its Green Paper

See the related article in [CFE European Tax Report 10/2011](#).

### READ MORE (click to open):

COM(2011)851: [EN](#) (available in several languages)

All contributions received to the Green paper: [EN](#)

### VAT explanatory notes on invoicing rule changes now available in 21 languages

The explanatory notes to the Second Directive on VAT invoicing 2010/45/EU were published on 5 October 2011 (see [CFE European Tax Report 9/2011](#), p.4) and have now been translated into all EU languages but Maltese. The Second VAT Invoicing Directive will apply as of 1 January 2013.

### READ MORE (click to open):

Explanatory notes: [EN](#) [FR](#) [DE](#) [BG](#) [CS](#) [DA](#) [ET](#) [EL](#) [ES](#) [IT](#) [LV](#) [LT](#) [HU](#) [NL](#) [PT](#) [RO](#) [SK](#) [SL](#) [FI](#) [SV](#)

### OECD article shares European Commission views on future of VAT

On 12 December 2012, almost simultaneously with the European Commission Communication on the future of VAT (see related headline in this issue), the OECD has published an article by Jeffrey Owens a.o. on the same issue on its website. Similar to the European Commission ideas and the UK Mirrlees report, the article suggests that a broad base VAT at a lower (ideally standard) rate would substantially help to reduce both compliance cost and tax administration costs, pointing out that countries that have introduced VAT after the EU countries have opted for far less exemptions than the EU VAT Directive allows. It also shares the view that VAT is more growth-friendly than income tax and will continue to gain relevance for national budgets. As to the social implications of VAT, the article argues that the whole tax, social contributions and benefit system must be looked at before a judgment on the social acceptability of increased revenue reliance on VAT can be made.

### READ MORE (click to open):

Full Article in OECD Observer: [EN](#)

### ECJ in Immobilien Linz: absorption of company's losses by a member due to a prior commitment is not taxable

On 1 December 2011, the European Court of Justice rendered its judgment in the preliminary ruling procedure Case C-492/10, Immobilien Linz, saying that the absorption of a company's losses by a member

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pursuant to an undertaking given before the losses were sustained, the sole purpose of which was to cover such losses, does not increase the assets of that company and thus is not taxable. Contrary to the Austrian case law, the ECJ considers that it is not necessary that this undertaking takes the form of a profit and loss transfer agreement.

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

Case C-492/10: [EN](#) (available in several languages)

## ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

### Dispute resolution: OECD releases 2010 country statistics on Mutual Agreement Procedure

On 8 December 2011, the OECD released its 2010 annual statistics on the mutual agreement procedure (MAP) under tax treaties. Since 2007, OECD countries are required to submit MAP-related statistical data to the OECD. In the aggregate, a continuous increase from 2006 to 2009 with a slight decrease in 2010 can be observed while more than 90% of OECD member countries' MAP cases are cases with other OECD member countries.

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

OECD news release: [EN](#) [FR](#)

Statistics: [EN](#) [FR](#)

## CUSTOMS

### Incorrect VAT on imports causes significant tax losses

The European Court of Auditors (ECA) reported on

13 December 2011 that member states are failing to ensure that the correct VAT rate is paid on goods imported into the Union and transported to other EU member states. According to EU law, VAT does not have to be paid in the member state of importation but only in the member state of destination. However, the case may be that goods are either not transported to that member state or that no VAT is collected in the destination state. The ECA carried out a performance check of the relevant customs procedure 42. According to the report, controls in member states to ensure that VAT was paid were deficient and member states did not ensure that the conditions for exemption are met. The ECA carried out an audit in seven member states where goods were imported and asked 21 destination member states to perform sample checks of whether VAT had been paid. The ECA estimates the EU-wide losses amounted to €2.2 billion in 2009 which would represent 29% of the theoretical VAT revenues in imports under the customs procedure. The proposed improvements to the EU regulatory framework were found insufficient. The ECA recommendations include a uniform communication of the complete VAT data for each intended transport and joint liability for unpaid VAT of importers that submit no VAT statement.

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

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

### Commission publishes progress report on the strategy for the future of the Customs Union

Taking into account the developments in global trade and use of IT, the effects of the economic crisis and counterfeiting, the changes EU law (modernised Customs Code in 2008 and Lisbon Treaty in 2009) and progress in policy (common EU "single window" concept), the report confirms the aims of the Customs Union as defined in 2008 and lists necessary improvements, in particular in governance and cooperation. The report was published on 20 December 2011.

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

Report: [EN](#) [FR](#) [DE](#)

## COMPANY LAW

### Hungary may not refuse to register company established in Italy, says Advocate-General

On 15 December 2011, Advocate-General Niilo Jääskinen delivered his opinion in preliminary ruling case C-378/10, VALE Építési on the cross-border move of company seat. VALE Építési was an Italian company that transferred its seat to Budapest. The company was deleted from the Italian trade register but entry into the Hungarian register was refused on the ground that the legal predecessor was not a Hungarian company. According to the Advocate-General, member states may apply specific procedures for cross-border situations but those may not be more burdensome than for domestic situations. Evidence may be required to prove that a company in another member state is the legal predecessor but registration may not be refused.

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

Opinion: [EN](#) (available in several languages)

## ACCOUNTING

### EP and Council agree on EU accounting exemption for “micro-entities”

In second reading and after agreement with the EU Council, the European Parliament voted on 13 December 2011 for an amended exemption of “micro-entities” from certain EU accounting obligations. In February 2009, the European Commission had proposed a new company category of micro-entities which member states could exempt from requirements contained in the EU Accounting Directive 78/660/EEC for limited liability companies. The aim of this proposal was to enable member states to reduce administrative burden for this group of companies but agreement on the threshold for micro-entities and the scope of the exemption between the EP and member states was only reached in November 2011 (see also [CFE European Tax Report 5/2011](#)). According to the text adopted on 13 December, companies not exceeding a balance sheet total of 350,000 €, a net turnover of 700,000 € or an average number of 10 employees over the financial year (two of these three criteria to be fulfilled) would classify as micros. Member states could exempt them e.g. from the obligation to present the items “prepayments and accrued in-

come” and “accruals and deferred income”, notes to the accounts, an annual report and from publishing the annual account provided that they file the information with a public authority who takes care of the publication. The micro-entities exemption was not included in the review of the EU Accounting Directive presented on 25 October 2011 (see [CFE European Tax Report 9/2011](#)) but the European Commission has confirmed its support.

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

EP resolution: [EN](#) (available in several languages)

## OTHER TAX POLICY

### Commission publishes paper on ‘Quality of taxation and the crisis: tax shifts from a growth perspective’

Recommendations on budget consolidation after the economic crisis favour an emphasis of taxation on consumption, property and environmental impact as such taxes are considered to have the least negative effect on economic growth. The study analyses to what extent this has been followed by the EU member states and considers the behavioural response of businesses and citizens to such tax changes.

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

Taxation papers: [EN](#)

## OTHER TAX EVENTS

### Brussels Tax Forum on “Tax policy under a common currency”

The European Commission has indicated that its 2012 Brussels Tax Forum will take place on 5 and 6 March. A programme is not yet available but is expected in the next couple of weeks on the DG TaxUD website.

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

DG TaxUD website: [EN](#)

## CROSS-BORDER SERVICES

### Commission investigates into restrictions for cross-border tax advisers

As a follow-up to its Communication of 27 January 2011 (see [CFE European Professional Law Report 1/2011](#)), the European Commission issued in summer 2011 a questionnaire to the EU member states titled “performance check professional services” in which it inquires into remaining restrictions to cross-border tax services. The questionnaire concerns formalities and requirements related to professional qualifications, company form and shareholding, professional indemnity insurance, advertising and e-services. Tax services are one of three sectors under particular scrutiny of the Commission, the other two being tourism and construction. The Commission has stated that the wide difference in regulation of the tax advisory activity has been a reason to take a closer look at tax advisers. The Commission has indicated that it considers legal form, shareholding, pricing and insurance requirements for temporary providers of services and for e-services contrary to Art.16 of the Services Directive 2006/123/EC.

[READ MORE \(click to open\):](#)

Related Commission website: [EN](#) [FR](#) [DE](#)

“Performance Check” questionnaire: [EN](#)

### MEPs ask for removal of restrictions to professional services and demand more publicity in mutual evaluation

On 25 October 2011, the EP adopted a report by Polish MEP Małgorzata Handzlik on the implementation of the EU Services Directive 2006/123/EC, stressing the need for more transparency in the process. The 2010 mutual evaluation following the 3 year transposition period of the Services Directive took place between the Commission and member states but not in public although some member states had consulted their domestic tax adviser bodies. Apart from demanding to be better informed itself, the EP “regrets that the regular feedback [...] has not been provided to stakeholders”. Still the EP acknowledges that mutual evaluation has proven an effective tool to create a spirit of cooperation between member states’ authorities which shall be extended to other policy areas where appropriate.

As to cross-border services, the EP demands that

the Points of Single Contact be in place soon and that they provide, next to the domestic language, information in English. The EP also welcomes the “performance check” exercise (see related article in this issue), calling rules on reserved activities, insurance obligations and legal form and ownership requirements “regulatory barriers [...] to be tackled and [...] slowing in particular growth in professional business-to-business services”.

[READ MORE \(click to open\):](#)

Handzlik report: [EN](#) (available in several languages)

### German Federal Tax Court rules that UK tax firm needed insurance

On 21 July 2011, the German Bundesfinanzhof (BFH, Federal Fiscal Court) confirmed a decision of the tax administration stating that a UK-based Ltd company had to be restricted from providing tax advice in Germany as the company was lacking professional indemnity insurance. It is however questionable whether this judgment can still be relied upon as the case occurred in 2008, before end of the implementation period of the EU Services Directive 2006/123/EC. The Services Directive states that member states may require indemnity insurance for established companies but does not contain such rule for temporary cross-border services (see also the [report](#) from the CFE PAC Conference 2011). In the case at issue, the tax adviser acting for the UK company was a German national whose authorisation to practice in Germany had been revoked years ago due to his bankruptcy.

[READ MORE \(click to open\):](#)

BFH case search (case reference II R 6/10): [DE](#)

## PROFESSIONAL QUALIFICATIONS

### Commission proposes new Professional Qualifications Directive

On 19 December 2011, the European Commission has proposed its revision of the Professional Qualifications Directive 2005/36/EC. The Directive applies where a person with a professional qualification from

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an EU member state seeks to exercise (temporarily or permanently, as employee or self-employed) a professional activity in another member state in which this profession is regulated by law. It governs the conditions under which the host member state must recognise the qualification. The new proposal refrains from radical changes of substantive law and focuses on procedural simplification and will be very relevant for CFE member bodies involved in IMI and the recognition procedure. A core element is the introduction of Professional Cards and application of tight procedural deadlines for a number of professions still to be determined. Other changes include the introduction of partial access to a profession subject to certain conditions, application to trainees and -for certain professions- the possible introduction of qualifications at European level next to the existing national qualifications. The CFE has been actively involved in the public consultation on the Professional Qualifications Green Paper (see e.g. [CFE European Professional Law Report 2/2011](#)).

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

Directive proposal: [EN](#) (available in several languages)

Summary of the responses to the Green Paper consultation: [EN](#)

CFE Opinion Statement of 7 October 2011: [EN](#)

Evaluation of Professional Qualification Directive: [EN](#)

## Professional Qualifications Directive applies to Switzerland

Following the conclusion of an agreement between Switzerland and the EU, the EU Professional Qualifications Directive 2005/36/EC applies to Switzerland of 1 November 2011. This means that professional qualifications obtained or recognised in Switzerland have to be recognised by EU member states according to this Directive and vice versa. Tax advice however is not a regulated activity in Switzerland. The provisions on temporary cross-border mobility will only apply once Switzerland has enacted a notification procedure. The Directive 2005/36/EC already applies to the EEA countries Norway, Iceland and Liechtenstein.

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

Text of the agreement: [EN](#) [FR](#) [DE](#)

Information on Swiss government website: [EN](#) [FR](#) [DE](#) [IT](#)

## PROFESSIONAL LAW

### Services standardisation proposal in Parliament

The Commission proposal of 1 June 2011 for a Regulation that would empower the Commission to mandate the development of European service standards (see [CFE European Professional Law Report 2/2011](#)) is currently dealt with in the European Parliament. On 4 January 2012, MEP Lara Comi (EPP, Italy), the rapporteur in the responsible IMCO Committee, has presented a draft report containing amendments that a.o. provide for a broader consultation of the relevant stakeholders. A first exchange of views in the IMCO is scheduled for 24/25 January 2012, the IMCO vote is foreseen for 21 March and the plenary vote for 22 May 2012. From the tax advisers' perspective, there is a concern that the advisory activity itself as a highly individualised service cannot be standardised.

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

Regulation proposal: [EN](#) (available in several languages)

Draft report by Lara Comi: [EN](#)

## CONTRACT LAW

### Consumer Rights Directive in force

On 10 October 2011, the EU Competitiveness Council adopted the Consumer Rights Directive which had passed the European Parliament on 23 June 2011 (see [Professional Law Report 2/2011](#), p.4). The Directive contains a number of information duties for

## CONTRACT LAW

tax advisers towards their consumer clients and contains a 14 day right of withdrawal of the consumer in “off-premises” and distance contract situations. The provisions of national law implementing the Consumer Rights Directive 2011/83/EU shall apply as of 13 June 2014. The CFE had issued an **Opinion Statement** on the draft Directive in November 2010.

[READ MORE \(click to open\):](#)

Council press release: [EN](#) [FR](#)

Official Journal of 22 November 2011: [EN](#)  
(available in several languages)

regulated professions, reserved activities, insurance obligations, capital ownership and legal form requirements (see points 4 and 6). Such requirements for tax advisers exist in many CFE member states.

[READ MORE \(click to open\):](#)

Council conclusions: [EN](#) [FR](#)

## AUDIT

### Commission proposes new audit rules containing far-reaching changes for professional firms

Please see the article in **CFE European Tax Report 10/2011** on the Audit Directive and Regulation proposals of 30 November 2011.

## TAX AND PROFESSIONAL AFFAIRS POLICY

### Council conclusions on the Single Market Act – priorities for re-launching the Single Market

Following the Competitiveness Council’s conclusions on the “Single Market Act”, adopted on 30 May 2011, the Ecofin Council adopted its own observations on 12 July 2011, commenting on the tax aspects of the Single Market Act and, surprisingly also on professional affairs aspects. The Single Market Act is a list of the Commission’s priorities in internal market policy for 2011/12 which was presented on 13 April 2011 (see **CFE European Professional Law Report 2/2011**).

Concerning “innovative financing instruments”, a term used by the European Commission for potential taxes of the financial sector or financial transactions, the Council remains reserved, stressing that further assessment was needed to measure their effectiveness and the risk of financial institutions leaving the EU or outsourcing activities. Indeed the Council expresses concerns that any such tax will have a negative impact on member states’ budgets (see point 4). Regarding the CCCTB and energy taxation amendment proposals, the Council uses neutral language saying it would “examine” the proposals (point 8).

Apart from that, the Ecofin conclusions welcome the Commission’s efforts to remove barriers to the single market for services, expressly naming the scope of

## DATA SECURITY

### Falsified internet certificates as a risk to government e-operations

In the Netherlands, business must file their tax returns electronically. CFE’s Dutch member organisation Register Belastingadviseurs reported that in summer 2011, hundreds of certificates of a private digital certification provider in the Netherlands had been falsified by hackers, reportedly for the purpose of spying into the communication of Iranian citizens through creating false websites. Although probably the Dutch authorities had not been the target of the hacking, their security could no longer be guaranteed and the lock out of all certificates from that company would have resulted in the inoperability of Dutch government websites including fiscal administration but also of many businesses.

[READ MORE \(click to open\):](#)

New York Times articles: [30/08/2011](#) [03/09/2011](#)  
[05/09/2011](#) [06/09/2011](#) [11/09/2011](#) [12/09/2011](#)

**IMPRESSUM**

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