European Tax Report
Confédération Fiscale Européenne (CFE)

February 2009 / Edition 2

CFE Forum 2009! (See page 8)

NEWS - INDIRECT TAX

European Council

Council Directive on combating VAT fraud

The Council Regulation and Council Directive of 16 December 2008 on combating VAT fraud has been published in the EU Official Journal.

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

EU Legislation

EN **FR** **DE**

Anti-fraud agreement with Switzerland

On 17 February the Cooperation Agreement between the European Community and its Member States, and Switzerland was published in the Official Journal of the European Union (L-046). The anti-fraud agreement's aim is to counter fraud and other illegal activities affecting the financial interests of both the EU and Switzerland. It contains provisions relating to administrative assistance and to mutual legal assistance in criminal matters for the protection of financial interests. Within the scope of the agreement are indirect tax (VAT and excise duties) and customs offences (including smuggling), corruption and money laundering. Direct taxation is excluded from the scope of the agreement.

Pending ratification by all Member States, the agreement can be applied provisionally by means of a declaration by contracting parties. Bulgaria, France, Poland and Sweden and Switzerland have made such a declaration, thus the agreement will be applicable bilaterally between them as from 8 April 2009. This group of four will later be joined by Germany, for which it will be applicable from 9 April, Finland from 15 April and the United Kingdom from 20 April. Greece, Italy, Ireland and the Netherlands have yet to ratify the anti-fraud agreement.

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Press Release

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List of labour intensive services benefiting from reduced VAT rates

European Finance Ministers are tired of tackling the question of reduced VAT rates month after month. They note that positions have not changed. Most Member States are in favour of reduced indirect taxation while a number of countries doubt such a measure would be effective. On 10 February, it was generally agreed that this dossier should be brought to a close during the March Ecofin Council. The Czech Finance Minister, Miroslav Kalousek put forward the idea of a “very limited list of high labour intensive services” which could permanently benefit from reduced VAT rates. This list could include services that are subject to transitional measures until end 2010 (Annex IV of Directive 2006/112/EC), in addition to catering services and the housing sector.

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

Press Release, p. 10

EN **FR**

Authorization of special Directive applications

A Council Decision of 10 February 2009 is authorizing the Czech Republic and Germany to apply measures derogating from Article 5 of Directive 2006/112/EC on the common system of value added tax.

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

Press Release, p. 20

EN **FR**

NEWS - INDIRECT TAX

European Parliament

Parliament backs lower VAT rates for labour-intensive services

The European Parliament support reduced VAT rates for certain goods and services. With its adoption of the report by Ieke van den Burg (PES, Netherlands) the EP approved the proposal for a Directive. MEPs want to provide greater flexibility to those Member States which would like to continue to apply reduced VAT rates to labour intensive services after the end of 2010. They back reduced indirect taxation for the whole of the housing sector and for restaurant services.

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NEWS - DIRECT TAX

European Council

EU-Liechtenstein; Anti-fraud agreement

The European Finance Ministers on 10 February adopted conclusions on "immediately" calling on the European Commission to continue negotiations on an anti-fraud agreement with Liechtenstein. The Council already called on the Commission to do the same in November last year and in mid-December 2008, the Commission presented proposed decisions on the signature of the EU/Liechtenstein anti-fraud agreement.

The Ecofin Council wants the agreement to focus on administrative assistance, whereby Liechtenstein would commit to respond to requests made by the tax authorities of the Member States, and effective access to information regarding "all forms of investment, particularly foundations and trusts". Regarding the exchange of information, the Ecofin Council expects Liechtenstein to include in the agreement obligations of a scope at least similar to that of the obligations the country recently concluded with third countries. This is a reference to the bilateral agreement signed by the Liechtenstein and the United States in December 2008 and which fixes the cooperation of the Liechtenstein authorities in the framework of tax fraud investigations carried out by the American authorities into American nationals who have placed savings in Liechtenstein.

The Finance Ministers called on the Commission to report back to them on progress made in May 2009 at the latest.

READ MORE *(click to open):*

Press Release, p. 20

EN FR

NEWS - DIRECT TAX

European Parliament

Transport Committee rejects contribution to climate change as criterion for taxation of heavy goods vehicles

On 11 February, the Committee on Transport of the European Parliament adopted, at first reading and by a large majority of votes, the report by Saïd El Khadraoui (PES, Belgium) on the revised proposed directive on the taxation of heavy goods vehicles (Eurovignette II), which aims to allow certain external costs of transport to be internalised. The vote supports the broad outlines of the initial proposal of the European Commission, but makes the application of congestion charges conditional upon these charges being levied on all other vehicles. The MEPs also removed the option previously open to the Member States to make heavy goods vehicles weighing less than 12 tonnes exempt from the scope of application of the text. The MEPs further rejected a proposal by the rapporteur to include in the "list of externals" provided for the calculation of the charge the contribution to climate change (calculated in relation to the cost of the greenhouse gas emissions) as a criterion for the taxation of heavy goods vehicles.

The Parliament will vote on the report during its first March plenary session (9-12/03). The Council is set to take position during the "Transport" Council" on 11-12 June.

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European Commission

Directive proposals to allow better co-operation between tax authorities

The European Commission adopted on 2 February two proposals for new Directives aimed at improving mutual assistance between Member States' tax authorities in the assessment and the recovery of taxes. One of the key elements of the proposals is that Member States would no longer be able to invoke bank secrecy in order to refuse cross border co-operation.

Administrative cooperation in the assessment of taxes

The Commission's proposals extend the scope of application of the current regime of mutual assistance in this area (directive 77/799/EEC of the Council), as it covers all taxes with the exception of that which is the subject of specific Community regulations, such as VAT and excise.

One of the main elements of the new draft Directive is to tackle the question of bank secrecy being invoked to refuse cross border co-operation. Based on the OECD Model Convention, the proposal contains a provision by which a requested Member State cannot refuse to supply information concerning a taxpayer of the requesting Member State solely because this information is held by a bank or other financial institution. As such, the proposal abolishes bank secrecy in the relations between tax authorities when a requesting Member State is assessing the tax situation of one of its resident taxpayers.

Another crucial element of the proposal is that Member States are obliged to provide the same level of cooperation to their EU partners as they have agreed to with any third country, thus stressing the specific EU dimension.

Mutual assistance in the recovery of taxes

The proposal to improve mutual assistance in the recovery of taxes aims at reinforcing and improving recovery assistance between the Member States. The proposal will make it possible to increase the rate of tax recovery, which currently represents just 5% of the amounts for which assistance is requested. The Commission proposes in particular to:

- Cover all taxes and duties levied by the Member States and their administrative subdivisions, as well as compulsory social security contributions;
- Introduce compulsory spontaneous exchange of information concerning refunds of taxes made by

NEWS - DIRECT TAX

national tax authorities to non residents;
- Allow officials of one country to actively participate in administrative enquiries on the territory of another country;
- Allow that recovery assistance is requested in an early stage of the recovery process, if this leads to an increase of the recovery chances;
- Simplify and rationalise the procedures to be used when requesting or providing mutual assistance

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Proposal for a Council Directive

EN FR DE

The Commission hopes Switzerland will cooperate with EU Member States in the same way as with the US

On 20 February the European Commission welcomed the decision by Swiss Bank UBS to cooperate with US tax authorities in revealing information on 250 American customers and in agreeing to pay the sum of €780 million to the US tax authorities.

The spokeswoman for Taxation Commissioner László Kovács said that the Commission expects a similar request from EU Member States to be treated in the same way, and that anything that improve good governance and transparency in taxation is welcomed.

The Commission had adopted a draft directive to "abolish banking secrecy for non-residents in cross-border requests for assistance" in both tax evasion and tax fraud. This legislation may only affect cooperation between EU Member States, but the Commission hopes that, if there was a similar request made of Switzerland by a Member State, this request would be dealt with in the same way (see the article above).

As a result of the agreement Switzerland is likely to retain some privacy rules but the country, and other smaller jurisdictions, are expected to co-operate more and more with western tax authorities when required.

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Hungary referred to the ECJ over discriminatory tax provisions on purchase of residential property

The European Commission has decided to refer Hungary to the ECJ for its provisions concerning the duty levied on the purchase of residential property.

Under Hungarian law, a person buying a house in Hungary must pay a duty which is calculated as a percentage of the value of the property. Where the property is the taxpayer's home and the purchase is preceded or followed by the sale of his previous home in Hungary, the duty is levied only if and to the extent that the value of the newly acquired property exceeds that of the one sold. However, where the purchase of a taxpayer's home in Hungary is preceded or followed by the sale of his previous home in another Member State, the duty will be calculated as a percentage of the value of the property purchased irrespective of the value of his previous home. As a result, people who move to Hungary and sell their homes in other Member States will be treated less favourably compared to Hungarian residents buying a new dwelling to replace their current one situated in Hungary.

Those provisions discriminate against taxpayers whose purchase is preceded or followed by the sale of their previous home in another Member State. The provisions are therefore incompatible with the free movement of persons and the freedom of establishment, as guaranteed by Articles 18, 39 and 43 of the EC Treaty and the corresponding articles of the EEA agreement.

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Portugal referred to the ECJ over discriminatory taxation of non-resident taxpayers

The European Commission has decided to refer Portugal to the ECJ for its tax provisions which oblige non-resident taxpayers to appoint a fiscal representative to represent them before the Portuguese tax authorities, and to guarantee the fulfillment of their fiscal duties if they obtain taxable income in Portugal. The Commission understands that the aim of this requirement is to guarantee payment of taxes and prevent tax evasion and that these are recognised requirements of public interest. However, the Commission is of the opinion that a general obligation imposed on non-residents to appoint a fiscal representative goes beyond what is necessary to ensure these objectives and thus impedes the free movement of persons and the free movement of capital as laid down in Articles 18 and 56 of the EC Treaty and in the EEA-Agreement.

The Commission's opinion is based on the EC Treaty as interpreted by the Court of Justice of the European Communities in its judgment of 7 September 2006 in case C-470/04.

READ MORE *(click to open):*

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Greece referred to the ECJ over discriminatory tax provisions for the acquisition of real estate in Greece

The European Commission has decided to refer Greece to the ECJ for its fiscal treatment applied to the acquisition of a first residential real estate in its territory. The Greek legislation exempts permanent residents in Greece from real estate transfer tax on the purchase of their first residential property, but does not grant the same exemption to first-time buyers who do not live permanently in Greece, but intend to do so in the future. Moreover, under certain circumstances the Greek rules provide for an exemption from real estate transfer tax to Greek nationals living abroad when they acquire their first residential property in Greece, while the same exemption is not offered to foreign nationals. In addition, the Commission considers that Greece discriminates on the basis of nationality.

The Commission considers that the exemptions provided in the Greek legislation violate the general discrimination ban, as well as the free movement of persons and the freedom of establishment laid down in the EC Treaty and in the EEA Agreement.

READ MORE *(click to open):*

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Infringement procedure against Greece for failure to comply with a Court judgment on capital duty

Greece applies capital duty when a company transfers its registered office or place of effective management to Greece. However, a general exemption from capital duty is given to maritime companies. The Commission considers that these rules are contrary to the Directive concerning indirect taxes on the raising of capital (69/335/EEC Directive) which allows Member States to subject only the formation of companies, not their transfer, to capital duty and which does not allow for the exemption of companies operating in specific economic sectors, such as shipping companies, from the tax.

Despite a 2007 ECJ judgment, Greece has not communicated any changes to its legislation and if Greece fails to comply with the letter of formal notice, the Commission may address a reasoned opinion to Greece before bringing the matter to the Court of Justice for a second time, seeking the imposition of penalty payments.

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Infringement procedure against Finland regarding discriminatory taxation of forest income for non-residents

The European Commission has sent Finland a formal request to amend its legislation which leads to different taxation of forest income depending on the residence of the owner. According to the Finnish legislation, non-residents are not entitled to any deductions for expenses or other types of deductions, which are available to residents for such income. The difference in treatment between tax payers with limited liability and unlimited liability amounts is an obstacle to the free movement of capital within the meaning of Article 56 EC. The effect of the legislation is that cross-border transfer of capital becomes less attractive by deterring investors who are not subject to unlimited tax liability in Finland from buying forest property in Finland. In the Commission's view the situations of persons with limited and unlimited tax liability, are objectively comparable and therefore a difference in treatment constitutes arbitrary discrimination which cannot be justified on the grounds provided under Article 58 EC (which allows discriminative measures justified on grounds of public policy or public security).

The Commission's request takes the form of a 'reasoned opinion' (second step of the infringement procedure of Article 226 of the EC Treaty). If Finland does not reply satisfactorily to the reasoned opinion within two months the Commission may refer the matter to the ECJ.

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Infringement procedure against Finland's discriminatory taxation of non-resident artists and sportsmen

According to the Finnish legislation, non-resident artists and sportsmen pay a final tax of 15% on their revenues from Finland, after certain limited deductions for lodging, transport and daily allowances. Resident artists and sportsmen are subject to a progressive tax rate and may deduct the actual expenses linked to their income. The fact that non-resident artists and sportsmen are subject to a different set of rules, may in some cases lead them to be taxed more heavily than their resident counterparts. The difference in treatment between resident and non-resident artists and sportsmen amounts to an obstacle to the freedom to provide services within the meaning of Articles 49 and 50 of the EC Treaty.

The Commission's request takes the form of a 'reasoned opinion'. If Finland does not reply satisfactorily to the reasoned opinion within two months the Commission may refer the matter to the ECJ.

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Infringement procedure against the UK to end discriminatory provisions regarding inheritance tax

The European Commission has formally requested the United Kingdom to amend its legislation which provides for discriminatory inheritance tax relief which are granted for agricultural and forestry property, respectively. The inherited agricultural property must be in the UK, the Channel Islands or the Isle of Man and the inherited forestry property must be in the UK in order for the taxpayers to be entitled to the relief. The tax relief is not available when the inherited agricultural and forestry property is situated elsewhere in the EU or EEA. The limited scope of the relief may dissuade taxpayers from investing in agricultural and forestry property outside the UK. Consequently, the Commission considers that the United Kingdom's legislation, in its current state, is not compatible with the free movement of capital provided by Article 56 EC Treaty and Article 40 of the EEA Agreement.

The requests take the form of reasoned opinions. If no satisfactory reaction to these reasoned opinions is received within two months, the Commission may decide to refer the matter to the ECJ.

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Infringement procedure against Bulgaria's discriminatory tax treatment of foreign bonds

According to the Bulgarian rules, interest and discounts (difference between the market price of a bond and its nominal value) from Bulgarian governmental, municipal and corporate bonds are tax exempt. Interest and discounts from governmental, municipal and corporate bonds issued in other EU Member States or EEA/EFTA states are not eligible for such an exemption and are subject to income tax in Bulgaria at a rate of 10%. The Commission is of the opinion that these rules may dissuade Bulgarian taxpayers from investing in bonds issued in other Member States and thus restrict the free movement of capital. Bulgaria thus fails to fulfil its obligations under Article 56 of the EC Treaty and Article 40 of the EEA Agreement.

The request takes the form of a reasoned opinion. If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the ECJ.

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Infringement procedure against the Czech Republic's discriminatory taxation of non-resident taxpayers

According to the Czech rules, the tax on certain types of income of legal persons and individuals resident in another EU Member State or EEA/EFTA state is assessed on a gross basis, while the tax on the same kind of income earned by Czech residents is assessed on a net basis. This concerns, in particular, income from rewards and remuneration paid to independent professions, royalties, lease of movable property and from the provision of services, consultancy, advisory, managing, intermediary and other activities.

The Commission is of the opinion that these rules may prevent non-residential taxpayers from providing services or making investments in the Czech Republic and thus restrict the freedom to provide services and the free movement of capital. The Czech Republic thus fails to fulfill its obligations under Articles 49 and 56 of the EC Treaty and Articles 36 and 40 of the EEA Agreement. If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the ECJ.

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OTHER NEWS

Conferences

CFE Forum 2009

The CFE annual Forum will be held on **23 April 2009,** between 9.15 hrs and 17.30 hrs. The Forum will take place at the *Representation of the State Saxony-Anhalt to the European Union in Brussels*.

Direct Taxation (Morning session)

Exit Taxes within the European Union – The session will consider the recent EU Council resolution inviting Member States to coordinate their policies on exit taxes to avoid discrimination and double taxation and in the light of ECJ judgments on the incompatibility of some existing exit taxes with the EC Treaty freedoms. The forum will also consider recent OECD proposals on the transfer pricing aspects of business restructurings. Finally it will examine the recent German legislation on exit taxation.

Speakers:
- Chair: **Paul Morton** (Reed Elsevier, Director of Tax, Past-President CFE, UK)
- **John Neighbour** (Head of UK Transfer Pricing KPMG, formerly head of OECD's Tax Treaty, Transfer Pricing and Financial Transactions Division, UK)
- **Dr Achim Roeder** (Deloitte & Touche GmbH, Germany)

Indirect Taxation (Afternoon session)

Cross-border VAT structures – Branch-Head Office, VAT Unit, Cost sharing group and Societas Europae.

Speakers:
- Chair: **Jeremy Woolf** (Barrister, Pump Court Tax Chambers, UK)
- **Dimitrios Triantafyllou** (DG Legal Service, European Commission, Brussels, Belgium)
- **Prof. Dr. Pierre –Marie Glauser** (Professor of advanced taxation, University of Lausanne, HEC Business School, Switzerland)
- **Ruud Zuidgeest** (Inhouse tax adviser, ING Group Tax, Amsterdam, the Netherlands)
- **Dr. Christoph Wäger** (Judge, Federal Fiscal Court, Germany)

For more information please see the CFE **website**

Event of the European Commission:

The Brussels Tax Forum 2009

The Brussels Tax Forum will take place in Brussels on **30 and 31 March 2009.** The topic chosen for 2009 is '*Tax Systems in a Changing World*'. The conference will focus on how to design direct and indirect tax systems that are robust, efficient and fair.

The Brussels Tax Forum is an annual conference organized by the European Commission. The Brussels Tax Forum is hosted in Brussels by László Kovács, the EU Commissioner responsible for Taxation and Customs Union.

Please click on the logo for further information

Studies made for the European Commission

Alternative Systems of Business Tax in Europe

A study on Alternative systems of business tax in Europe (ACE/CBIT) has been published on the Commission’s website. Using an applied general equilibrium model for Europe, the study explores the economic implications of an allowance for corporate equity (ACE), a comprehensive business income tax (CBIT) and a combination of these two systems. The key trade-offs in designing ACE and CBIT in the presence of tax distortions are illustrated at various decision margins of firms (financial structure, investment, profit allocation and location).

READ MORE *(click to open):*

Alternative Systems of Business Tax in Europe

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IMPRESSUM

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