



## European Tax Report Confédération Fiscale Européenne (CFE)

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# CFE Forum 2009 (See page 6)

### NEWS - INDIRECT TAX

## European Council

### Political agreement on reduced VAT rates for services

On 10 March, European Finance Ministers unanimously reached a political agreement on the proposal for a directive on reduced VAT rates for a number of high labour intensive services. The political agreement concerns the draft agreement proposed to the Member States by the Czech EU Presidency and which enables Member States to apply a 5% VAT rate. The usual minimum rate allowed in the EU is 15%.

The political agreement authorizes reduced VAT rates to be applied to the following services:

- Bicycle, shoe and leather goods, clothes and household linen repairs
- Window cleaning and cleaning private dwellings
- Personal care such as home care for children, the elderly, ill or handicapped
- Hairdressing
- Renovation of private dwellings, but not materials which form a significant part of the value of the service supplied. These services will enjoy transitional measures until the end of 2010.

Further services have been added to the list:

- Catering services
- Books in whatever format (print, audio, CDROM).

To this proposal specific requests had to be added from some Member States (national exemptions to normal VAT rules were agreed for Portugal and Cyprus). Moreover, in a declaration annexed to the draft agreement, six Member States (Germany, Bulgaria, Denmark, Estonia, Lithuania and the Czech Republic) state their conviction that the application of reduced VAT rates is not the best way to stimulate economic competitiveness. However, saying that discussions had lasted more than 10 years, European Taxation Commissioner László Kovács was pleased that the extension of transitional measures would allow 18 member states to continue to apply reduced rates on some labour-intensive services for an indefinite length of time.

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## European Commission

### Reduced VAT rates unlikely in the upcoming "Green Tax" proposal

The European Commission is supposed to put forward legislative proposals modifying existing EU laws on taxation of energy products in early April. The "Green Tax" proposals will be accompanied by a Commission communication and a staff working document on the role of taxes in energy and environmental policy. The package also includes a draft law to amend the 2006 VAT Directive, with view to cutting VAT on some environmentally-friendly goods, including energy efficient light bulbs and insulation. However, the European Commission might decide against proposing such reduced VAT rates due to the concerns reflected in a consultants' report, submitted to DG TAXUD in December (see *European Tax Report 1/2009*), citing negative cross-border effects and higher energy demands. Many Member States also have "substantial reservations" on whether the scheme can play a significant role in promoting green products, and ultimately the EU's climate goals. Reduced VAT rates to promote green products are therefore unlikely to feature as a part of the "Green Tax" package. However, the legislative package is still at a drafting stage and details of its exact content are yet to emerge.

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Final Report - Reduced VAT for Environmentally Friendly Products

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**NEWS - INDIRECT TAX****Infringement procedure: Italy asked to modify rules on taxable amount for immovable property supplies**

The European Commission has formally requested Italy to modify its legislation according to which VAT on transactions involving immovable property is determined as a percentage of the open market value if the price declared by the parties does not correspond to the market price. Under Community rules on VAT, taxable amount, in principle, includes everything which constitutes consideration obtained by the supplier. The European Commission argues that the Italian tax administration cannot automatically calculate VAT for immovable property on the basis of the open market value without any evidence of tax fraud or evasion, in the absence of particular circumstances defined by the VAT Directive. The European Commission considers this provision to be disproportionate, as it places the burden of proof on taxable persons without any evidence of the existence of tax fraud.

The request takes the form of a 'reasoned opinion' (second step of the infringement procedure provided for in article 226 of the EC Treaty). If the relevant national legislation is not amended in order to comply with the reasoned opinion, the Commission may decide to refer the matter to the ECJ.

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**Poland referred to ECJ for including car tax in the taxable amount of VAT**

The European Commission has decided to refer Poland to the ECJ as regards the inclusion of the amount of its car registration tax within the taxable amount of VAT in the case of road vehicle supplies. The Commission considers that the car tax should not be included in the taxable amount of VAT. The rules on the taxable amount of VAT have been harmonized at the EU level, and the uniform application of those rules is an essential condition for the proper operation of the VAT system. In the light of this, the European Commission has taken the view that the criteria of the ECJ Case C-98/05 must be applied also to the car tax levied in Poland, since it is basically identical to the Danish one examined by the

Court in the case C-98/05.

In Case C-98/05 the ECJ examined whether the taxable amount for VAT purposes, must include the amount of the registration tax, which is usually paid by the supplier to the tax authorities and afterwards repaid to him by the purchaser along with the price of the vehicle. The Court ruled that, in the context of a contract of sale providing that the dealer will supply a vehicle registered for a price which includes the registration tax he paid before supplying the vehicle, the amount of that duty must not be included within the taxable amount of the VAT charged on the sale of the vehicle.

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**Greece referred to ECJ for failing to notify the transposition of two VAT Directives into national law**

The European Commission has decided to refer Greece to the ECJ for failing to notify the Commission of the measures it adopted to transpose Directives 2006/69/EC and 2006/112/EC into national law. Directive 2006/69/EC brings in more effective and transparent rules allowing Member States to adopt anti-fraud measures more flexibly than before while at the same time repealing certain derogations granted to individual Member States. The Directive entered into force on 31 December 2007. Directive 2006/112/EC is a recasting of Directive 77/388/EEC, once commonly referred to as the "Sixth VAT Directive", to rationalize into a single statutory instrument the various amendments made to that Directive over time. This Directive entered into force on 1 January 2008. The quest for better governance in the application of Community law requires Member States to comply strictly with the time limits for transposing Community directives.

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## NEWS - DIRECT TAX

### European Council

#### Increased cooperation in exchange of tax information

On 13 March Austria, Belgium, Luxembourg, Andorra, Lichtenstein and Switzerland announced that they were to amend their tax legislation so that there could be greater cooperation with the authorities of other countries investigating tax evasion and fraud by their nationals. The aim is to avoid featuring on a blacklist of uncooperative tax havens. The countries have been under pressure to announce concessions on sharing of banking information to evade tax evasion since a meeting of EU members of the G20 on 22 February called on the OECD to draw up a list of uncooperative tax havens prior to the G20 summit on 2 April.

Ministers from Austria, Luxembourg and Switzerland stated that they in the future will share information on demand with foreign authorities carrying out tax investigations. The commitment would be enshrined in double-taxation agreements to be concluded with partner countries and the change would bring the countries into line with OECD guidance on tax cooperation, the "model tax convention". However, this means neither the end of traditions of banking secrecy nor automatic data exchange.

#### Changes announced to fulfil the OECD guidance

- Austria and Luxembourg are ready to fall into line with OECD standards on mutual administrative assistance in cases of justified suspicion of tax evasion and/or fraud.
- Austria will withdraw its reserves against article 26 of the model convention, by which it fulfil all the standards of transparency set by the OECD.
- The Swiss government said that it would exchange information in response to "specific and justified" requests and that the new cooperation would not require changes to Swiss law.
- Liechtenstein announced that it will adopt OECD standards on transparency and information exchange.
- Andorra declared that it would eliminate strict banking secrecy for tax purposes by November.

At the start of February, the European Commission proposed new rules to abolish banking secrecy in the EU when a Member State receives a request for assistance on a tax issue from another Member State. Austria, Belgium and Luxembourg currently opt out

of EU rules on the exchange of banking information between tax authorities by using a 'withholding tax'. Belgium has announced that it is prepared to give up the withholding tax for which it has opted under directive 2003/48/EC on taxation of savings revenue, by 2010. Switzerland, which applies a similar exemption, stated that the EU agreement would need to be renegotiated to take into account the announced changes.

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### European Commission

#### Infringement procedure: Bulgaria requested to end discriminatory taxation of non-resident taxpayers

According to the Bulgarian rules, certain types of Bulgarian source income of legal persons and individuals resident in other EU Member States or EEA/EFTA states are subject to withholding tax on a gross basis. However, the tax on similar income earned by Bulgarian residents is assessed on a net basis. This particularly concerns income from rewards and remuneration paid to scientists, artists and sportsmen, technical services fees, including any consultancy fees, income from franchise and factoring agreements, management fees, income from immovable property, interest, royalties and lease of movable property.

The European Commission is of the opinion that these rules may prevent non-resident taxpayers from providing services or making investments in Bulgaria and thus restrict the freedom to provide services and the free movement of capital. Bulgaria thus fails to fulfil its obligations under Articles 49 and 56 of the EC Treaty and Articles 36 and 40 of the EEA Agreement.

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**NEWS - DIRECT TAX****Infringement procedure: Austria requested to end discriminatory tax treatment of donations**

Two aspects of the Austrian rules regarding donations in the field of science and research are challenged by the European Commission. Firstly, donations to certain institutions established in Austria such as universities, art colleges or the academy of science, may be recognised and deducted as operating expenses by any person making such donations, while donations to comparable institutions in other countries may not be deducted. Secondly, without taking the place of establishment into account for certain other donation recipients engaged in research or educational activities, the donations are only recognised as deductible expenses if the related activities are carried out for the benefit of Austrian science or the Austrian economy.

The European Commission considers these rules to be incompatible with the freedom to provide services and the free movement of capital (Articles 49 and 56 of the EC Treaty). The request takes the form of a reasoned opinion. If there is no satisfactory reaction to the reasoned opinion within two months, the European Commission may decide to refer the matter to ECJ.

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**Germany referred to ECJ over discriminatory rules for buildings abroad**

The European Commission has decided to refer Germany to the ECJ for its discriminatory tax depreciation rules applied to buildings situated abroad. According to German law, buildings are generally depreciated for wear and tear using the linear depreciation method. Section 7(5) of Income Tax Act (EStG) provides, by way of derogation, for reducing-balance depreciation in case of construction of rental housing in Germany. I.e. higher percentages are applied in the first year(s) and lower percentages in subsequent years. However, this advantage (tax deferral) is not granted for buildings situated outside Germany.

The European Commission considers this difference in treatment to be incompatible with the principle of

free movement of capital as guaranteed by Article 56 of the EC Treaty. Since the financial burden is likely to be particularly heavy in the first years after the purchase of a building, the investment in buildings situated abroad becomes less attractive due to these less favourable depreciation rules and investors may thus be deterred from purchasing a building in another EU Member State.

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**Germany referred to the ECJ over its discriminatory taxation of outbound dividends**

The European Commission has decided to refer Germany to the ECJ for its tax provisions concerning outbound dividend payments to companies (outbound dividends are those paid by a German company to a foreign shareholder, while domestic dividends are those paid by a German company to a German shareholder). In the Denkvit ruling (Case C-170/05) the Court confirmed the principle that outbound dividends may not be subject to higher taxation in the source State (i.e. the State from where the dividends are paid) than domestic dividends.

Since Germany taxes dividends paid to foreign companies more heavily than dividends paid to domestic companies the European Commission considers this higher taxation of outbound dividends to be contrary to the EC Treaty and the EEA Agreement. Thus it restricts the free movement of capital and the freedom of establishment provided for in Article 56 of the Treaty and Article 40 of the EEA Agreement.

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## NEWS - DIRECT TAX

**Spain referred to the ECJ over restrictive exit tax provisions for individuals**

The European Commission has decided to refer Spain to the ECJ for its tax provisions which impose an exit tax on individuals who cease to be tax resident in Spain. The European Commission considers that immediate taxation penalises those persons who decide to leave Spain, by introducing less favourable treatment for them in comparison to those who remain in the country. The Spanish rules in question are therefore likely to dissuade individuals from exercising their right of free movement and, as a result, constitute a restriction of Articles 18, 39 and 43 EC and the corresponding provisions of the EEA Agreement.

The European Commission's opinion is based on the EC Treaty as interpreted by the ECJ in its judgment in the case *De Lasteyrie du Saillant* (Case C-9/02), as well as on the Commission's Communication on exit taxation (COM(2006)825 of 19 December 2006).

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## OTHER NEWS

**European Commission****European Commission's 2009 programme on taxation**

Robert Verrue (Director General, DG TAXUD) presented the European Commission's programme for taxation 2009 at the Meeting of Economic and Monetary Union section of the European Economic and Social Committee in Brussels on 2 February.

Cited focus areas:

- The European Economic Recovery Plan for Growth and Jobs
- Good Governance in the tax area
- Review of the Savings Directive
- Coordination of Direct Tax Systems
- CCCTB
- Reduced VAT rates
- Combating tax fraud
- Green tax package

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

Speech by Robert Verrue

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**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*

## OTHER NEWS

### CFE Forum 2009

The CFE annual Forum will be held on **23 April 2009**, between 9.00 hrs and 17.30 hrs. The Forum will take place at the *Representation of the State Saxony-Anhalt to the European Union in Brussels*.



SACHSEN-ANHALT

#### 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
- **Bert Zuijdendorp**, Head of Unit, Control of the application of community legislation and state aid/ direct taxation, European Commission
- **Dr. Achim Roeder**, Partner, Transfer Pricing, Deloitte & Touche GmbH, Germany
- **Prof. Isabelle Richelle**, Professor at HEC-Business School of the University of Liège Member of the Brussels Bar, Liedekerke Wolters Waelbroeck Kirkpatrick Deputy Judge

#### Indirect Taxation (Afternoon session)

**Cross-Border VAT Structures** – During the session issues such as FCE Bank, VAT grouping, Societas Europaeae, and cost sharing groups will be discussed. The topic will be examined from various perspectives, such as; business, third country, the European Commission and the German administration.

Speakers:

- Chair: **Jeremy Woolf**, Barrister, Pump Court Tax Chambers, UK)

- **Rolf Diemer**, Head of Unit, VAT and other turnover taxes, European Commission
- **Prof. Dr. Pierre-Marie Glauser**, Oberson Avocats, Professor of taxation, University of Lausanne (HEC Business School), Switzerland
- **Dr. Ruud Zuidgeest**, ING Group Tax, Amsterdam, The Netherlands
- **Werner Widmann**, Head of section Taxation, Ministry of Finance Rhineland-Palatinate, Mainz, Germany

For more information and registration please see the CFE [website](#)

## IMPRESSUM



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