



European Tax Report Confédération Fiscale Européenne (CFE)

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NEWS - INDIRECT TAX

EUROPEAN COMMISSION

Commission takes steps against VAT infringements in Spain

The European Commission has formally requested Spain to bring its administrative practice regarding the application of certain VAT rules to for determining the taxable amount in case of barter transactions in line with the provisions of the VAT directive.

In Spain, when a future building is sold and paid for prior to its final construction, VAT is charged at the time the payment is made, and the taxable amount is the amount actually paid. No additional VAT is levied at a later stage when, upon final construction, the building is delivered to the purchaser. This is in conformity with the VAT Directive.

However, if the advance payment of the planned building is made in kind, the taxable amount for the purposes of VAT is different. In that case:

- VAT is levied when the advance payment is made on the basis of the market value foreseen for the building once it has been constructed;
- if, once construction is over, the market value of the building is higher than foreseen, a correction of the taxable amount initially calculated must be made and the purchaser of the building is requested to pay VAT on the difference.

The Commission understands that the product supplied is identical in both transactions and that only the means of payment are different. According to the ECJ using different means of payment for acquiring a product cannot lead to a different VAT liability. For these reasons, the Commission has formally requested Spain to change its administrative practice.

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Customs beyond 2013: Commission launches a debate on the future evolution of customs

The European Commission has adopted a Communication in order to develop a long term strategy for the evolution of the Customs Union. The Communication enumerates the strategic objectives for Customs based on present developments, such as Electronic Customs and Modernised Customs Code, and proposes a coordinated approach for the customs working methods in order to meet these objectives. It stresses the need to develop as soon as possible a multi-annual strategic plan and a comprehensive implementation plan which would ensure that all actors (Commission, Member States and traders) are able to make their own resource planning and would be ready in time to meet the objectives of a more efficient EU Customs.

Set-out of a strategic framework for Customs beyond 2013

László Kovács, EU Commissioner responsible for Taxation and Customs, said: „We have recently made huge progress at EU level in modernising customs (...). It is however already time to reflect on a new long term strategy in order to maintain the high performing EU customs. Therefore, the Commission needs clear political guidance from the Council to elaborate such a strategy and full commitment from the Member States in providing the necessary resources for the future developments.”

The Commission proposes to set out a strategic framework in order to streamline all the initiatives and to also enhance developments in other areas of the customs work.

This will include the following aspects:

- Increasing competitiveness of European business by modernising customs working methods
- facilitating legitimate trade by improving customs control systems and reducing administrative burden
- enhancing protection of the society against safety and security risks by developing effective risk management methods and ensuring protection of financial interests of the Community
- enhancing co-operation between custom authorities as well as with other governmental agencies and with the business community.

In order to reach these objectives, the Commission invites the Council to approve the strategic framework and give political support in developing a multi-annual strategic and an implementation plan which would ensure that all actors are able to make their own resource planning and would be ready in time in order to create an evermore efficient EU customs.

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List of meeting documents:

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Working document „Anti-abuse rules“:

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Taxation of dividends - Steps against Bulgaria, Spain, Portugal and Romania

The European Commission has sent reasoned opinions to Spain and Portugal about their rules under which dividends paid to foreign pension funds are taxed more heavily than dividends paid to domestic pension funds. It has also sent requests for information in the form of letters of formal notice to Bulgaria about its rules under which inbound dividends paid to companies may be taxed more heavily than domestic dividends and to Romania and Bulgaria about their rules under which outbound dividends paid to companies may be taxed more heavily than domestic dividends.

NEWS - DIRECT TAX

EUROPEAN COMMISSION

CCCTB - Anti Abuse Rules

Details of a paper, entitled „Anti-abuse rules“, prepared by the Commission Services for the meeting of the Common Consolidated Corporate Tax Base (CCCTB) Working Group, held on 14 and 15 April 2008, have recently become available.

The paper presents a comprehensive analysis of possible anti-avoidance rules in the CCCTB context and concentrates on the pros and cons of general and/or specific anti-abuse provisions. It also outlines the issues and policy choices regarding anti-avoidance rules that remain to be addressed. Further details are available on the website of DG TAXUD of the European Commission.

Case being closed against Luxembourg

At the same time the Commission has closed the case against Luxembourg on the higher taxation of outbound dividends paid to companies, as Luxembourg has eliminated the discriminatory taxation.

“I am pleased to note that Luxembourg has changed its discriminatory tax rules on outbound dividends. I am confident that eventually all Member States which still have similar discriminatory rules will also amend their legislation accordingly” said Taxation and Customs Commissioner László Kovács.

Outbound dividends are dividends paid by domestic companies to shareholders resident in other States. Domestic dividends are dividends paid by domestic companies to domestic shareholders. Inbound dividends are dividends paid by companies resident in other States to domestic shareholders.

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Hungary requested to end discriminatory tax incentives for R&D

The European Commission has formally requested Hungary to change its tax law provisions which limit the granting of a tax incentive to taxpayers who engage in research or development activities performed on premises located in Hungary. The provisions are incompatible with the freedom to provide services as guaranteed by Article 49 of the EC Treaty and Article 36 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 European Court of Justice.

Under Hungarian Law, basic research, applied research or experimental development services performed on premises managed by a research institution of higher education or the Hungarian Academy of Sciences are treated more favourably than similar R&D activities performed on similar premises located in other EU Member States or EEA/EFTA countries. As a result, these provisions discourage Hungarian companies and entrepreneurs from carrying out their R&D activities in other EU Member States or EEA/EFTA countries and therefore impede the free provision of services as guaranteed by Article 49 of the EC Treaty and Article 36 of the EEA Agreement.

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EUROPEAN PARLIAMENT

EP abandons idea of minimum community tax

On 24 April, the Parliament adopted the own initiative report of French Socialist, Anne Ferreira MEP, on the European Commission's Green Paper on helping the sustainable development of market based instruments. It called on the Commission to present a legislative proposal before the end of 2008 that would introduce a "minimum Community tax on CO₂". It also appeals for the drawing up of a European strategy on the use of market based instruments for the economic evaluation of environmental damage, even though it believes that these instruments cannot actually replace legislation on the environment. The Commission declared that it „is planning to revise the Energy Taxation Directive in autumn with the objective of ensuring that it contributes more effectively to meeting the EU energy and climate change targets”.

Taxes as contribution to sustainable development

Taxes and payments constitute market based dissuasive instruments that can contribute to sustainable development. MEPs believe, however, that environmental taxation should not be used by member states to increase their tax revenues and also affirm that creating taxes on such negative factors as pollution should be compensated by a reduction in fiscal pressure on positive factors such as work.

They are planning on the creation of a "carbon tax", as a European border adjustment mechanism for fighting against the environmental dumping of products manufactured in countries that are not committed to combating global warming.

This carbon tax will partly act as a counterpart to the reduction in subsidies on fossil fuel use. MEPs also support a reduction in rates of value added tax (VAT) or tax reductions of energy efficient products and materials. The legislative proposal on reduced VAT is expected out next July.

OTHER NEWS

Commission proposes improvement of public access to EU documents

EUROPEAN COMMISSION

Approach on back office withholding tax

The Commissioner for Internal Markets and Services, Charlie McCreevy, set out the Commission approach on removing fiscal barriers to the integration of clearing and settlement markets at a conference on back office operations, organised by the European Central Bank (ECB) in Frankfurt on Monday 21 April. This approach, based on the recommendations of the Fiscal Compliance Group (FISCO), has two sections:

- immediately establishing bilateral contact between the two member states concerned to settle transaction tax procedures problems;
- drawing up a recommendation in 2009 on withholding tax procedures.

Later in the year, a further expert group will give its final opinion on the legal barriers restricting the integration of the back office sector. In line with Ecofin Council wishes, the Commission will bring forward concrete plans and a timetable for removing the legal and fiscal barriers identified in the "Giovannini report".

Read more (click to open):

Speech of Commissioner Charlie McCreevy:

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The Commission has adopted changes to the rules of access to documents from EU institutions. These changes reaffirm the Commission's commitment to transparency, up-date the rules to reflect recent case-law and aim to allow the institutions to be more efficient in responding to requests from citizens.

President of the European Commission, José Manuel Barroso said, "At the start of my Commission I stressed the need to increase the transparency of our work. The access to documents rules are working well. These changes seek to respond to the evolving case-law of the Court and improve the access to documents for European citizens".

Margot Wallström, Vice-President, Institutional Relations and Communication Strategy said: "Our objective is increased transparency, increased access and increased outreach and understanding. This is fundamental in any democratic system: the citizens' right to know. Access to documents is an essential tool for democracy and now we want to improve it."

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Background Information + Key documents

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The Commission is putting the finishing touches to amendments to the directives on the settlement finality in payment and securities settlement systems and on financial collateral arrangements to adapt European legislation in the light of market developments.

The voluntary code of conduct, adopted in November 2006, has three sections: price transparency, access to infrastructure supplier services, and interoperability, unbundling of services and separate accounting.

When the Commission launched its drive towards more transparency in November 2005 – the European Transparency Initiative – it also decided to review the Regulation. As a first step, the Commission published a Green Paper and held a wide public consultation in spring 2007. The improvements now suggested by the Commission are based on the outcome of this consultation, as well as on recommendations made by the European Parliament, and on the case law of the European Courts.

Documents of Brussels Tax Forum available now

The conference documents of the Brussels Tax Forum, which took place in Brussels on 7 and 8 April 2008, are available as of now.

The topic chosen for this year was „Taxation policy: enhancing competitiveness and growth in a European way“. The conference focused on the contribution that taxation can make to promote growth and competitiveness in the European Union, while bearing in mind social aspects. CFE President Maria Perez-Luque participated in the first panel discussion on „The role of taxation in enhancing growth and competitiveness“.

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Presentations and Speeches

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OECD

Release of the Draft contents of the 2008 Update to the Model Tax Convention

The OECD has now released for comments the draft contents of the 2008 update to the Model Tax Convention which the Committee on Fiscal Affairs intends to finalize in June 2008.

Part I of the draft update includes a number of technical changes that have not previously been released for comments. Part II includes all the draft changes to the Articles and the Commentary that are proposed as part of the update and Annexes 1 and 2 show the changes that have been made to earlier versions of the proposals related to the tax treaty treatment of services and to the revised Commentary on Art. 7.

The contents of the 2008 update result primarily from reports, that were previously released for comments. Although these changes had already been revised following their initial release in April 2004, the Working Party has concluded that further discussions

of these changes were necessary. As part of the update, a number of changes and additions will also be made to the observations, reservations and positions of member and non-member countries. These are in the process of being formulated and will be included in the final version of the update.

Comments should be sent until 31 May 2008 to:

OECD

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2008 Update to the Model Tax Convention:

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CFE FORUM 2008

Conference Documents available

The CFE Forum 2008 took place at the Renaissance Hotel in Brussels on Thursday 3 April 2008. The morning session “The Taxpayer’s Charter - a Model for Europe?” examined the role Taxpayer’s Charters can play in improving all countries’ tax systems for the benefit of revenue authorities, taxpayers and tax advisers. The afternoon session “VAT formalities for electronic invoicing - a challenge for Europe’s businesses” responded to problems businesses nowadays face due to legal uncertainty, non-compliance with requirements and a lack of confidence in the implementation of e-Business solutions by highlighting overall technical and legal issues.

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Conference documents

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IMPRESSUM

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