European Tax Report
Confédération Fiscale Européenne (CFE)

April 2009 / Edition 4

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European Court of Justice

European Parliament

MEPs support actions to improve fight against VAT fraud I

On 24 April, the European Parliament adopted the advisory report of Cornelis Visser (EPP-ED, Netherlands) on changes to the “VAT directive” (2006/112/EC) to fight more effectively against VAT fraud linked to intra-Community imports. The report supports the Commission's proposal to toughen up VAT exemption conditions when imports of goods are followed by a transfer to another Member State, and to make the provider carrying out the intra-Community operations liable for losses in VAT revenue caused by its customer to the Member State of destination when the said provider has not made any declaration or has provided incomplete or erroneous data. On the final point, MEPs state that providers can provide justification of their failure to abide by the rules in the two months following notification of this failure by the national administration. They add to the list of exceptions for which this cross-border joint and several liability does not apply cases where at least two years have lapsed between intra-Community delivery and notification by the tax authority of failure to comply.

READ MORE *(click to open)*:

Press Release

EN FR

Universal postal service exempt from VAT (Case C-357/07)

The ECJ ruled in its decision made on 23 April 2009 that the universal postal service carried out by the **British Royal Mail** is exempt from VAT insofar as this operator provides postal services in response to the essential needs of the British population. The ECJ notes, however, that the Royal Mail is subject to VAT when it provides individually negotiated provisions of service.

As Royal Mail before was the only universal postal service provider in the UK it was obliged to provide a universal postal service. From 2006, the postal market in the UK was fully liberalised, without affecting the status and obligations of Royal Mail. The conveyance by Royal Mail of postal packets and letters is not subject to VAT in line with the 6th VAT Directive which exempts ‘public postal service’ from VAT on the basis that they represent activities in the public interests.

TNT brought action before the High Court of Justice calling into question the validity of the exemption of VAT of Royal Mail’s postal services, submitting that their services are the same, but that they are subject to VAT. The court requested the ECJ for an interpretation of the expression ‘*public postal services*’ in the context of a fully liberalized market and the extent of the VAT exemption for those services. The ECJ declared that ‘public postal services’ must be regarded as operators, whether public or private, who undertake to supply postal services which meet the essential needs of the population and therefore in practice, to provide all or part of the universal postal service in a Member State. In addition, the Court considers that such an interpretation is not contrary to the principle of fiscal neutrality since, on account of the obligations imposed under its licence, Royal Mail supplies postal services under a legal regime which is substantially different from that of an operator such as TNT Post. The supplies of services by those two companies are therefore not comparable.

READ MORE *(click to open)*:

Press Release Case C-357/07

EN

NEWS - DIRECT TAX

OECD

New agreements on exchange of tax information

On 30 March the Isle of Man, Jersey and Guernsey signed new bilateral agreements responding to international standards of the OECD on the exchange of information in the event of tax evasion and tax fraud. The Isle of Man has signed an agreement with France, bringing the number of its bilateral agreements to 14. Jersey has signed agreements with France and Ireland (13 bilateral agreements in total), and Guernsey has done the same with Germany, France and Ireland (a total of 11 agreements). The Principality of Monaco has also announced that it was prepared to include all of the OECD's standards in a specific agreement currently being negotiated with the Commission and that it hopes to finalise this before the end of the year.

G20 Summit

According to the press release issued by the G20 leaders, 'The era of banking secrecy is over.' On 2 April the OECD published three 'name and shame' lists. The lists include countries which have “committed” to follow OECD standards on information sharing but have not yet “substantially implemented” them. A total of 38 jurisdictions are included, 30 of which are designated as tax havens. European tax havens include Andorra, Gibraltar, Liechtenstein, Monaco and San Marino (but not Austria, Luxembourg, or Switzerland). The first 'black list' names countries that have not yet made any progress towards bringing their rules in line with OECD standards. Austria, Belgium, Luxembourg, Switzerland and Liechtenstein find themselves on a second 'grey list', which names 38 territories that have committed to OECD standards but have yet to fully implement the required changes. China is on a 'white list' of countries that have substantially implemented the tax rules. China has been placed on the list for its slow progress on implementing the rules in the Chinese-controlled regions of Hong Kong and Macau.

Austria, Luxembourg and Switzerland have strongly criticised their inclusion on the list. However, Austria's Finance Minister, Josef Pröll, said that his country being included on the second list was proof that Austria had taken a step in the right direction. Luxembourg's Prime Minister Juncker said the 'factual list' was of countries that had accepted the OECD agreement on the exchange of banking information upon request but had not yet been able to apply it because it would necessarily involve the signing of further agreements to avoid double taxation. Explaining that Luxembourg was currently negotiating with France and Germany over adding special clauses to existing bilateral agreements, Juncker pointed out that it was not possible to sign some two dozen deals only three weeks after accepting the OECD rules.

READ MORE *(click to open)*:

OECD black list as at 2nd April 2009

EN

European Parliament

MEPs support end to savings taxation banking secrecy

On 24 April, the European Parliament adopted by a clear majority, the advisory report of Benoît Hamon (PES, France) on the proposal to amend directive 2003/48/EC on savings tax. The report supports the ECON proposal to end the European legislation taxation mechanism (which allow some countries no to reveal the identity of those investing their savings on their territory in exchange for a temporary withholding tax) in July 2014

MEPs adopted an amendment from the Greens/EFA calling on the Commission to provide a list of financial products subject to interest payments. They also examined an amendment from the socialists to include all capital payments in life-assurance and old-age insurance to be included in the field of application.

Commissioner László Kovács indicated during the EP plenary debate on 23 April that he considers that fixing a date for the end of the transitional period is premature at this stage and that it could create an obstacle to the necessary quick adoption of the amending proposal by the Council. He stated that here is a need to evaluate when and how the political commitments for enhanced cooperation, which have been taken by a number of jurisdictions, can be implemented.

READ MORE *(click to open)*:

Press Release

EN FR

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European Commission

Communication on good governance in taxation

On 28 April the European Commission adopted a Communication identifying actions that EU Member States should take to promote "good governance" in the tax area (i.e. more transparency, exchange of information and fair tax competition). The Communication identifies how good governance could be improved within the EU. It also lists the tools the EU and its Member States have at their disposal to ensure that good governance principles are applied at international level. Finally, it calls on Member States to adopt an approach that is more coherent with good governance principles in their bilateral relations with third countries. The Communication builds on the existing EU policy on good governance and the recent G20 conclusions concerning uncooperative tax jurisdictions.

The Commission stresses that improving good governance within the EU would reinforce the argument for other jurisdictions to take similar steps and calls therefore on the Member States to adopt its proposals.

The Commission also calls on Member States to continue the work to eliminate harmful business tax measures under the *Code of Conduct for Business Taxation*.

Some of the concrete actions proposed by the Commission are:

- To invite the Council to give the appropriate political priority to the mandate given to the Commission to include good governance principles in relevant EU agreements with third countries.
- To discuss with Member States possible countermeasures towards non cooperative jurisdictions in the tax area (the OECD Secretariat has suggested a list of measures. These will need to be examined together with the Member States).
- To promote more cooperation with third countries in the framework of the Savings Tax Directive.
- To conclude specific agreements in the tax area containing, if appropriate, provisions on transparency and exchange of information for tax purposes at EU level to accelerate the process of implementing commitments to greater transparency and exchange of information made by certain jurisdictions.
- To consider a reallocation of funds towards developing countries that are implementing satisfactorily their commitments; and, conversely, considering a cancellation of funds earmarked for those countries that did not implement their commitments.
- More coherence between Member States' own bilateral tax policies towards third countries and the principles of good governance in the tax area.

READ MORE *(click to open)*:

Commission Communication

EN

Report on the functioning of the Interest and Royalties Directive

On 17 April the European Commission sent a report to the Council on the functioning of the Interest and Royalties Directive. The aim of the Directive is to eliminate double taxation on cross-border interest and royalty payments between associated companies.

The report says that the directive is being implemented in a 'satisfactory' manner in twenty Member States although several cases of dubious transposition and interpretation have come to light vis-à-vis minimum ownership periods, the beneficiary's residency for tax purposes, the ownership threshold, disguised profits, the correlation between the directive on interest and charges and the directive on parent companies and subsidiaries, and the clauses on fraud and abuse.

The report also looks at improvements to the existing text, including broadening the scope of the Directive. The Commission suggests:

- The Directive could be amended to remove discrimination between subsidiaries and 'stable establishments'.
- The urgent need to bring the ownership criteria in line with Directive 90/435/EEC on parent companies and subsidiaries and the merger directive.

The Commission says it is 'necessary' to draw up 'guidelines' on what a 'stable establishment' is, in order to ensure the rules are interpreted in a uniform manner and says that the feasibility of extending the scope of application of Directive 2003/49/EC to non-related companies should be looked into.

Discussions on the findings of the report at Council level should provide guidance to the Commission for a future amending legislative proposal.

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READ MORE *(click to open):*

The Commission Report

EN

Infringement procedure: European Commission asks France for information on "malus tax"

The Commission has formally requested France to provide information on the "malus tax" due when cars are registered in France for the first time. According to the Commission, the method of calculating the flat-rate depreciation on second-hand vehicles brought into France from another Member State may constitute discrimination against such vehicles.

France has adopted legislation introducing a "malus tax", due when the most highly polluting passenger cars are registered in France for the first time. The Commission does not object to the "malus tax" as applied to new vehicles, nor to its intended purpose. The Commission supports initiatives that help to protect the environment. However, such developments must be in compliance with the relevant Community provisions, in particular the principle of non-discrimination against products from the other Member States (Article 90 of the EC Treaty).

The request was made by letter of formal notice, which is the first step in the infringement procedure provided for in Article 226 of the EC Treaty. If the Commission does not receive a satisfactory response from France within two months, it may proceed with the second stage of the procedure (a reasoned opinion) and ultimately bring the case before the ECJ to have the provision objected to amended.

READ MORE *(click to open):*

European Commission's request for information

EN

Infringement procedure: Portugal referred to ECJ over taxation of lottery winnings

The European Commission has decided to refer Portugal to the ECJ for its tax provisions which provide for taxation of the vast majority of foreign lottery winnings whereas winnings from national lotteries or from lotteries part of the European Euromillions network are exempt from income tax. The Commission considers these rules to be contrary to the EC Treaty and the EEA Agreement, as they restrict the freedom to provide services.

Following the reasoned opinion sent to Portugal the European Commission in September 2008, Portugal amended in December 2008 its legislation and extended the tax exemption to winnings from the State lotteries which are part of the European Euromillions network. However, Portugal did not extend the tax exemption to all foreign state lotteries, which are not part of the Euromillions network.The Commission therefore considers that the exemption provided in the Portuguese legislation constitutes a discrimination prohibited by the EC Treaty. Taxing the winnings from foreign but not national lotteries cannot possibly be justified as a measure to avoid the damaging consequences of gambling.

READ MORE *(click to open):*

Press Release

EN FR DE

European Court of Justice

The Polish limitation of reduction is an unjustified restriction on the freedom of movement (C-544/07)

Under Polish legislation, only health insurance contributions paid to a Polish insurance institution can be deducted from income tax. The case concerns Mr Rüffler who, since 2005, is permanently resident in Poland as a retired person. He lived before in Germany, where he was employed. At the time when the dispute arose, Mr Rüffler's only income came from two pensions paid in Germany: an invalidity pension, taxed in Germany, and an occupational pension, which was taxed in Poland. During 2006, Mr Rüffler applied to the Polish tax authorities for the income tax to which he is liable in Poland on his occupational

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pension received in Germany to be reduced by the amount of the health insurance contributions which he has paid in Germany. The Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court, Wrocław), addressed the case to the ECJ regarding whether the limitation of the right to a reduction of tax is compatible with Community law.

The ECJ ruled in its judgment of 23 April 2009 that persons who, after retirement, leave the Member State of which they are nationals and in which they have carried out all their occupational activity in order to take up residence in another Member State are exercising the right which the EC Treaty confers on every citizen of the European Union to move and reside freely within the territory of the Member States. The Court states that the opportunities which the Treaty offers in relation to movement could not be fully effective if it were possible for a national of a Member State to be deterred from availing himself of them by obstacles placed in the way of his stay in the host Member State by national legislation penalising the fact that he has availed himself of those opportunities. The eCJ is therefore of the view that a limitation of the right to a reduction of income tax, such as that provided for under Polish law, constitutes a restriction on the freedom of movement and residence in the territory of the Member States which is not objectively justified.

READ MORE *(click to open):*

Press Release Case C-544/07

EN

OTHER NEWS

European Commission

Taxation Papers

The European Commission has published three Taxation Papers on corporate taxation:

- Taxation Paper **No 14** - Corporate effective tax rates in an enlarged European Union
- Taxation Paper **No 15** - Corporate Income Tax and Economic Distortions
- Taxation Paper **No 16** - International Taxation and Multinational Firm Location Decisions

READ MORE *(click to open):*

Taxation Papers (EN)

14 **15** **16**

Conferences

OECD Conference

The OECD has opened registration for its Conference "*Transfer Pricing and Treaties in a Changing World*", which will take place in Paris (at the OECD's conference centre) on 21-22 September 2009. The Conference will consider cutting-edge transfer pricing and treaty developments that affect governments and multinational enterprises in a changing world.

READ MORE *(click to open):*

Information about the OECD Conference

EN

The Brussels Tax Forum 2009 - *Tax Systems in a Changing World*

The Brussels Tax Forum was organized by the European Commission. The conference focused on how to design direct and indirect tax systems that are robust, efficient and fair. The complete video of the 2009 Brussels Tax Forum, as well as presentations and speeches, is now available on the Commission's **website**.

OTHER NEWS

CFE 50th Anniversary Conference

The CFE celebrates its 50th Anniversary in 2009. To highlight this event the CFE, together with the Institute des Avocats Conseils Fiscaux (IACF), will organize an Anniversary Conference on Friday **25 September 2009** in Paris. The topic of the Conference is "*Making Europe more competitive - Where are we after 50 years*?".

The CFE is delighted to announce that **Christine Lagarde**, French Minister for the Economy, Industry and Employment, will be the opening speaker of the Conference.

More information about the conference can be found on the CFE **website**

CFE Forum 2009

The CFE annual Forum was held on **23 April 2009.** The Forum took 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 considered 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 morning sesion also considered recent OECD proposals on the transfer pricing aspects of business restructurings. Finally it examined the recent German legislation on exit taxation.

Presentations Speakers (*click on the name to open*):

- **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

Indirect Taxation (Afternoon session)

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

Presentations Speakers (*click on the name to open*):

- Chair: **Jeremy Woolf,** Barrister, Pump Court Tax Chambers, UK)
- **Dr. 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 (presentation in DE)

IMPRESSUM

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