European Tax Report
Confédération Fiscale Européenne (CFE)

April 2010 / Edition 4

## NEWS - INDIRECT TAX

### EC Commission updates information on VAT rates

The rates applicable in the EU Member States as of 1 May 2010 are available on the Commission´s website.

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

**EN** **FR** **DE**

### New electronic system to monitor the movement of excise goods

On 1 April 2010, the electronic Excise Movement and Control System (EMCS) of products subject to excise duties (alcohol, tobacco and energy products) entered into operation. The implementation will take place in several steps. Companies from 19 countries (AT, BE, BG, CY, CZ, DE, EE, ES, FR, HU, IE, IT, LV, LT, LU, MT, RO, SE, SI) may already present electronic administrative documents for products delivered to other member states while all EU enterprises must be able to clear these documents electronically. The remaining countries must follow until the end of this year. For deliveries to Greece (May 2010), Italy (June 2010), Denmark and Poland (January 2011) there will be extensions of the deadline, meaning that they will still be carried out by paper documents.

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

Press release: **EN** **FR** **DE**

EMCS overview: **EN** **FR** **DE**

Directive 2008/118/EC: **EN** **FR** **DE**

### Two VAT exceptions for the Netherlands and Luxembourg/Germany

On 6 April 2010, the European Commission presented two draft decisions on exemptions from the VAT directive (2006/112/EC). They concern the Dutch option to maintain until the end of 2012 their rule according to which clothing manufacturers (or the main company) are responsible for ensuring the VAT compliance of their sub-contractors. The other declaration concerned the VAT treatment of the construction of a bridge between Germany and Luxembourg.

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

Luxembourg/ Germany: **EN**

The Netherlands: **EN**

### Deduction of input VAT: ECJ rules on joint VAT cases C-536 and 539/08, X and Fiscale Eenheid Facet

On 22 April 2010, the ECJ delivered a judgement in another Dutch request for a preliminary ruling in VAT matters, stating that a right to deduction of input VAT does not exist in the situation described in Art. 28b (A)(2) of the 6th VAT Directive where a member state has issued a value added tax identification number under which the person acquiring the goods has made the acquisition, unless the person acquiring the goods establishes that that acquisition has been subject to tax in the member state to which the goods were delivered.

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

Judgement: **EN** **FR** **DE**

## NEWS - INDIRECT TAX

### ECJ rules on VAT deductibility of various expenses in combined cases C-538/08 X Holding and C-33/09 Oracle Nederland

On 15 April 2010, the ECJ has found that a member state may exclude from deduction the VAT relating to categories of expenditure concerning the provision of private transport, food, drink, accommodation and opportunities for recreation to the members of staff of a taxable person as well as the provision of business gifts or other gifts.

Furthermore, national legislation that was enacted before the 6th Directive under which a taxable person may deduct VAT paid on the acquisition of certain goods and services used partly for private and partly for professional purposes only in proportion to their use for professional purposes is in conformity with EU law.

Finally, the Court accepted a Dutch amendment after the entry into force of that directive, to an existing exclusion from the right of deduction, designed in principle to restrict the scope of that exclusion but in respect of which it cannot be ruled out that, in an individual case in a particular tax year, the scope of that exclusion might be extended by reason of the flat-rate nature of the amended scheme.

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

Judgement: **EN** **FR** **DE**

## NEWS - DIRECT TAX

### Commission publishes report on removing tax obstacles to cross-border venture capital investment

On 30 April 2010, the European Commission published a report which outlines the double taxation problems that arise when venture capital is invested cross-border, as well as possible solutions. The report sets out the findings and recommendations of an independent group of EU tax experts, which was set up by the Commission to look at how to remove the main tax barriers to cross-border investment in venture capital. The Commission will now consider how to follow up on the findings in the report, in line with its broader agenda to eliminate double taxation in the EU.

The solution recommended is that the tax authorities of the country of the portfolio company confirm that the activities of the venture capital fund manager are considered as activities of an independent agent and not be seen as permanent establishment of the fund or its investors in the state where the fund manager is active so they would not be additionally taxed in that country. To prevent double taxation, the experts recommend a legally binding agreement between the EU member states on mutual recognition of the classification for tax purposes of different legal forms of venture capital funds.

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

Press release: **EN** **FR** **DE** (available in 22 languages)

### Commission opens public consultation on double taxation problems in the EU

On 27 April 2010, the European Commission has launched a public consultation on double taxation problems that citizens, businesses and tax advisers have encountered when operating across borders within the EU. The consultation will be open until 30 June 2010.

Tax Commissioner Algirdas Šemeta had repeatedly stated that the elimination of double taxation was a key priority for his term of office.

Although mechanisms like double taxation conventions and national tax reliefs are supposed to prevent or relieve international double taxation, the Commis-

## NEWS - DIRECT TAX

sion is unsure about how well these mechanisms work in practice and whether they result in the effective elimination of double taxation. The consultation concerns all direct taxes – income taxes, corporate taxes, capital gains taxes, withholding taxes, inheritance taxes and gift taxes, also welcoming suggestions on how to effectively and rapidly remedy the double taxation identified.

After the closing of the consultation and evaluation of the responses, the Commission will publish a summary of all contributions received. It will also analyse the replies in detail and use them in preparing possible initiatives for EU action in the field of direct taxation.

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

Press release: **EN** **FR** **DE**

Consultation document: **EN** **FR** **DE**

### ECJ ruling dismisses different German gift tax treatment of non-residents

On 22 April 2010, the European Court of Justice delivered its judgement in the Mattner case (C-510/08) stating that the free movement of capital (Art. 63, 65 TFEU, then Art. 56, 58 EC) precluded Germany from applying a smaller allowance to be set against the taxable value in the case of a gift of immovable property located in Germany where both the donor and the donee were resident in another Member State.

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

Judgement: **EN** **FR** **DE**

### OECD invites comments on discussion draft on the application of Article 17 (Artists and Sportsmen) of the OECD Model Convention until July

The OECD Committee on Fiscal Affairs has invited public comments on draft changes to the Commentary on Article 17 of the OECD Model Tax Convention, which deals with cross-border income derived from the activities of entertainers and sportsmen. Comments however will not yet be included in the next update to the Model Tax Convention scheduled for approval in June 2010.

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

News release: **EN** **FR**

### OECD paper on Czech experience from the introduction of a flat income tax rate

In 2008, the Czech government implemented a major overhaul of the personal income tax, replacing the previous progressive rate schedule with a single 15% rate levied on an enlarged base. This was accompanied by significant changes to the corporate income tax and an increase in the concessionary rate of VAT applied to many goods and services. The paper published on 20 April 2010 relates to the 2010 Economic Survey of the Czech Republic and describes the elements and assesses the impact of the mentioned tax reform.

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

Report: **EN**

## Administrative cooperation and fight against tax fraud

### Promoting tax cooperation to help developing countries –Commission issues communication on tax and development

On 21.4.2010, the European Commission has adopted an action plan to speed up progress towards the “millennium development goals”. One element of this is the Communication on taxation and development which promotes increasing developing countries‘ domestic revenues through building stronger domestic fiscal systems and fighting tax evasion internationally. To achieve this, the Commission supports the idea of country-by-country-reporting by multinational companies that operate in developing countries in order to enhance transparency and facilitate access to relevant data by tax offices in developing countries. Transfer pricing practices should not be used to lower the multinationals´ tax liabilities. Work on this issue is currently being undertaken by the OECD with respect to a country-by-country-reporting guideline, which should then be referred in the OECD Guidelines for Multinational Enterprises and in the OECD Principles of Corporate Governance.

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

Press Release: EN

Document: EN FR DE

Background: EN

### OECD and Council of Europe will review their Convention

The OECD and the Council of Europe have agreed on a protocol updating the Convention on Mutual Administrative Assistance in Tax Matters, an international treaty that aims to help governments enforce their tax laws, as part of the worldwide drive to combat cross-border tax evasion. The review will align the convention to the international standard on information exchange for tax purposes by allowing for the exchange of bank information. Signature of the amending protocol is planned at the OECD’s annual ministerial meeting on 27-28 May 2010. The original convention entered into force in 1995 and currently groups 14 OECD and Council of Europe countries. However, in the future it shall be open also to countries not member to the two organisations, in particular developing countries.

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

News Release: EN FR

Background information on the OECD/Council of Europe convention: EN

### OECD develops principles for successful offshore voluntary compliance programmes

OECD has issued recommendations for the successful implementation of voluntary compliance programmes aimed at encouraging taxpayers to declare their income and assets they have hidden in offshore destinations. Those programmes must not only observe other legal requirements like anti money-laundering rules but also be acceptable from the point of view of taxpayers that have been compliant and are therefore pose both legal and political challenges.

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

EN

## State Aid

### Commission invites comments on German “Sanierungsklausel”

On 8 April 2010, the European Commission has invited comments on the question whether European state aid rules should apply to the possibility of fiscal loss carry-forward for ailing companies that has been introduced in Germany to help companies cope with the economic crisis (see European Tax Report 2/2010, p.4). Although this aid is not limited to a certain number of companies or sectors, the Commission has expressed concerns regarding the compatibility of this measure with EU law as it considers the measure selective. Comments can be sent within one month.

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

EN FR DE

## Other Tax Policy

### Commission issues working paper on financial and environment taxes as “innovative financing” options

On 6.4.2010, the European Commission published a staff working document assessing the main sources of “innovative financing” currently under discussion. The analysis considers that some of those instruments could have a doubled beneficial effect of both raising revenues and improving market efficiency and stability, in particular by putting a price on risk-taking in the financial sector and on carbon emissions. According to the paper, global coordination will be essential for a successful implementation of most instruments of innovative financing, however not excluding actions at the EU level alone.

Concerning financial institutions, the paper suggests a levy similar to the Swedish ‘stability fee‘ introduced last year to be prepared for possible future national bank bail-outs (see European Tax Report 1/2010, p.8). The Swedish fee is calculated based on all bank liabilities excluding equity capital and some junior debt securities. Regarding financial transaction taxes, the Commission appears more hesitant, fearing that ultimately consumers would have to pay more and investors might move to other markets.

The paper suggests raising the costs of emissions trading allowances or imposing a tax on emissions not covered in the trading scheme. On carbon taxes, the Commission raises the question of their compatibility with the internal market (if introduced at national level) and with WTO agreements (if raised EU-wide).

The additional revenue should be used for development aid and to help developing countries fight the consequences of climate change.

European Socialists and other NGOs and trade unions have criticised the Commission´s hesitation towards introducing a financial transaction tax, considering that the work document on innovative financing did not reach far enough. In a press release, German MEP Udo Bullmann said: “The European Commission has ignored the near unanimous call for a considered response from the European Parliament and is attempting to sweep the issue of a financial transaction tax under the carpet. This is an insult”, referring to the EP vote (see European Tax Report 3/2010, p.1), a view shared by the President of the Party of European Socialists (PES) Poul Nyrup Rasmussen.

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

Press release: EN FR DE

Working document: EN

### Commission issues paper on “Taxation and the quality of institutions: asymmetric effects on foreign direct investment”

The paper was released on 30 March 2010.

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

EN

### Survey of trends and developments in the use of electronic services for taxpayer service delivery

In March 2010, the OECD Forum on Tax Administration issued its latest survey report containing an extensive assessment of the use by tax authorities of modern technology to deliver modern electronic services, the last report on this issue having been delivered in 2005.

## Other Tax Policy

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

Press release: **EN**

Survey report: **EN**

### Programmes to reduce the administrative burden of tax regulations - follow up report

Reducing administrative burdens is a priority in many countries. This report by the OECD's Forum on Tax Administration is based on a survey of 20 OECD member countries, describes the strategies, approaches and measures being used by tax policy makers and revenue bodies to achieve their burden reduction targets. It describes the opportunities and barriers to burden reductions, citing a number of revenue body approaches and case studies.

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

Report: **EN**

News Release: **EN**

## Other EU news

### Lisbon Treaty in Official Journal

The consolidated version of the Treaty of the EU and the Treaty on the Functioning of the EU have been published in the EU Official Journal on 30 March 2010.

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

Official Journal: **EN** **FR** **DE**

## IMPRESSUM

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