European Tax Report
Confédération Fiscale Européenne (CFE)

July / August 2008 / Edition 5

NEWS - INDIRECT TAX

European Council

Recovery of claims on certain levies, duties and taxes

The Council adopted a codified version of directive 76/308/EEC laying down rules aimed at ensuring the recovery in each member state of claims on certain levies, duties and taxes which arise in other Member States. The new directive supersedes the various acts incorporated in directive 76/308/EEC whilst fully preserving its content. Directive 76/308/EEC is thereby repealed.

Read more (click to open):

Summary of the legislation

EN **FR** **DE**

VAT on insurances and other financial services

At its meeting in June, the Council took note of a progress report from the past presidency of Slovenia on a proposal for a directive on the VAT treatment of insurance and other financial services. It called on the following French presidency to build on progress made and to report back to the Council by the end of the year. The proposal is aimed at clarifying and updating the definitions and rules governing insurance and financial services – which are exempt from VAT – thus increasing legal certainty for economic operators and tax administrations, reducing administrative burdens and reducing the impact of hidden VAT in the costs of service providers.

The existing definitions were established in the 1970s and have led to uneven interpretations by the Member States.The proposal is intended to amend directive 2006/112/EC on the common VAT system. It is closely connected to a proposal for a regulation laying down implementation measures for directive 2006/112/EC as regards insurance and other financial services.

Read more (click to open):

Directive 2006/112/EC

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Council encourages COM to continue work on conventional measures against tax frauds

At the ECOFIN meeting of 4 December 2007, the Council took note of the progress made on the preparation of measures – so-called conventional measures – and invited the COM to continue its work with the aim to present its findings to the Council during the first half of 2008. The COM has carried out this work in close co-operation with the Member States and gave an oral report of the envisaged legislative proposals at the ECOFIN meeting of 14 May 2008. Most of these proposals result from the discussions on the conventional measures that took place in the Anti Tax Fraud Strategy group. The first set of measures is scheduled for October 2008 and will include the following items:

- Joint and several liability
- exemption of VAT at importation
- Recovery of taxes

A second set of measures is scheduled for November 2008 and will mainly focus on the improvement of the administrative cooperation between Member States.

It will notably cover:

- Automated access to specific data.
- Common minimum standards for registration and deregistration of taxable persons in VIES (Value added tax Information Exchange System).
- EUROFISC (European Network composed of officials from national Tax Administrations).
- Report on the functioning of administrative co-operation.

A third set of legislative proposals focusing on a modification of the VAT directive regarding invoicing rules and VAT chargeability on Intra-Community transactions is planned for December 2008.

Read more (click to open):

Press Release European Council, p.19

EN FR DE

Proposal for a directive on general arrangements for excise duties

At its meeting in June, the Council took note of a progress report from the Slovenian presidency on a proposal for a directive establishing general arrangements for excise duties. It called on the French presidency, which took over the lead of the Council at the 1st of July, to build on progress made, with a view to the timely adoption of the directive so as to enable a new excise movement and control system to start operating as soon as possible.The proposal is intended to provide the legal basis for a modernized movement and control system, with an electronic message to replace the accompanying paper document that currently enables the control of intra-community movements of excise goods.

EUROPEAN COMMISSION

COM proposes categories of services to which Member States may apply a reduced VAT rate

The European Commission made a proposal to change the VAT Directive 2006/112/EC so as to provide Member States with the flexibility to apply reduced VAT rates for some specific services on a permanent basis.

The Commission proposal covers areas where there is sufficient evidence that reduced rates do not create problems for the proper functioning of the Internal Market. The sectors concerned are mainly so-called labour-intensive services and locally supplied services, such as services related to the housing sector or restaurant services. The proposal is also part of the small business act as SMEs dominate the sectors concerned.

The proposal neither alters the principle that the application of reduced rates is optional for Member States, nor includes a general review of the numerous derogations granted to various Member States. It also does not widen the scope of reduced rates for environmental or energy saving purposes.

On this last point, the Commission is currently carrying out a number of studies concerning the possible use of reduced rates for energy saving materials or energy efficient goods and services in accordance with the request formulated by the European Council in March 2008. The Commission will present the results of its analysis, accompanied by relevant proposals in autumn.

Read more (click to open):

Press Release

EN FR DE

Speech of Commissioner Kovács on the proposal:

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NEWS - INDIRECT TAX

COM takes steps against Spain regarding rules on import VAT

The Commission has formally requested Spain to bring its national rules governing the right to deduct VAT on imports into line with the provisions of the VAT Directive. According to the VAT Directive, the right to deduct VAT due on the importation of goods:

- arises at the time when the goods are imported;
- requires, in order to be exercised, that the taxable person be in possession of an import document specifying him as consignee or importer, and stating the amount of VAT due or enabling that amount to be calculated.

However, according to the Spanish VAT legislation in force prior to 1 January 2008, the right to deduct VAT due on the importation of goods:

- arises at the time when the taxable person pays the deductible VAT to the customs authorities
- requires, in order to be exercised, that the taxable person be in possession of a document showing that the VAT has already been paid to the customs authorities

The Commission considered the Spanish legislation in breach of the VAT Directive. Following this, the Spanish authorities amended Article 98 of the Spanish VAT Law as of 1 January 2008. However, Article 97 thereof remained untouched, the consequence being that according to the rules presently in force, and contrary to the VAT Directive, deduction of VAT due on imports is still conditional upon the importer being in possession of a document attesting to the fact that VAT has already been paid to the customs authorities.

Read more (click to open):

Press Release

EN FR DE

EP prepared to overhaul EU VAT system to combat tax fraud

Early in September 2008, the European Parliament is expected to adopt an own initiative report by British Liberal MEP Sharon Bowles on a coordinated strategy to combat tax fraud, which is estimated to cost some €200 billion a year, €50 billion of which in VAT fraud. The report will suggest that finance ministers radically overhaul the EU VAT tax system by suggesting that they levy VAT in the Member State of origin at a flat rate of 15%.

This would replace the current rules abolishing controls on intra-EU transactions and making the Member State of destination responsible for collecting VAT, a system which has been in place since the 1990s and has been considered as ‘provisional’ since then. Under the Bowles Report it adopted, the European Parliament’s Economic and Monetary Affairs Committee believes that the current system for collecting VAT is out-of-date and requires a radical overhaul without creating more red tape for businesses.

Profound changes require a high degree of caution

Given the differences in levels of VAT across the EU, this profound change to the rules would require compensatory payments to be made among the Member States and the MEPs call for the set up of a clearing house to make it easier to transfer revenue among the Member States, or alternatively a decentralised system of clearing houses which would be easier to set up. The Commission doubts above all that the Member States would agree to around 10% of their tax revenue being contingent on transfers from other EU countries. This explosive political situation has not escaped the rapporteur, who describes it as the most important problem when it comes to amending EU rules.

Twice this year, the ECOFIN Council failed to unanimously agree on a conclusions document on the best way of tackling tax fraud mainly due to Germany and Austria’s desire to carry out country-level tests of the reverse charge VAT mechanism despite opposition from most Member States. On this point, the draft EP report recommends a high degree of caution before deciding to introduce a reverse charge mechanism but does not oppose the launch of a pilot project in a Member State to gain greater understanding of the risks and benefits.

NEWS - INDIRECT TAX

Tobacco Taxation : COM proposes increasing excise duties

The Commission presented a Report and a proposal for a Directive to amend the current EU excise duty legislation on tobacco. The draft Directive foresees a gradual increase in the EU minimum tax levels on cigarettes and fine cut tobacco up to 2014. The proposal will also narrow differences between Member States' tobacco taxation levels and so help tackle intra-EU tobacco smuggling. Amongst others, it also aims on contributing to reducing tobacco consumption by 10% within the next 5 years.

Read more (click to open):

Press Release

EN FR DE

VAT - Review of existing legislation on invoicing

Consultation

The European Commission has launched an online consultation to ascertain the views of businesses on the review of the existing legislation on VAT invoicing. The consultation is based on an Invoicing Study to be produced for the Commission.The Commission hopes to receive contributions regarding a selection of recommendations which are included in the Invoicing Study as well as other recommendations businesses may have.

Interested parties are invited to submit their comments by letter, fax, electronic mail **until 19 September 2008** the latest.

Correspondence:

European Commission
Directorate-General for Taxation and Customs Union
VAT and other turnover taxes
Rue Montoyer 59, office 5/96
B-1049 Brussels

Read more (click to open):

Consultation document

EN FR DE

Selection of the recommendations

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ECJ Case C-132/06 Italian Tax Amnesty for VAT is unlawful

Italian legislation makes it possible, as regards the years 1998 to 2001, for persons taxable for VAT purposes to correct past tax returns by filing a 'Supplementary return' accompanied by payment of the additional VAT. This is calculated by applying the provisions in force during each of the tax periods. Moreover, an 'Automatic settlement' procedure enables taxable persons who have not filed a return to pay an amount equal to (or less than) 2% of the VAT payable on supplies of goods or services. The effect is that, for the person concerned, fiscal administrative penalties lapse, no criminal penalties can be applied and no further tax verifications are possible.

The Court points out, first, that it is for each Member State to take all legislative and administrative measures appropriate for ensuring collection of all of the VAT due on its territory, by checking returns, and calculating and collecting the tax due. But they are obliged to ensure effective collection of the Community's own resources and not to create differences in the manner in which taxable persons are treated.The Court finds that the effect of the considerable imbalance between the amounts actually due and the amounts paid by taxable persons taking advantage of the tax amnesty is tantamount to a tax exemption which seriously disrupts the proper functioning of the common system of VAT and compromises the common market.

Read more (click to open):

Press Release

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Full judgement

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NEWS - DIRECT TAX

EUROPEAN COUNCIL

Code of Conduct for Business Taxation

At its meeting in June, the Council took note of a report from a working group, which, on the basis of a Code of Conduct, works on the elimination of situations of harmful tax competition in the EU. The report summarises the group's work since the beginning of this year.

The Code of Conduct, which covers business taxation, concerns measures that affect (or may affect) in a significant way the location of business activity in the European Community. The so-called Code of Conduct group is responsible for assessing:

- the "rollback" of tax measures deemed as harmful (where favourable tax treatment in one Member State attracts business from other Member States)
- the monitoring of a "standstill" commitment by Member States not to introduce new measures are harmful

Regarding the Code of Conduct, the European Council

- asks the group to continue monitoring standstill and the implementation of rollback and report to the Council before the end of the French presidency.
- underlines the importance of agreement on the future work programme and, building on the work of the group, will return to the outstanding issues under the French presidency."

Read more (click to open):

Harmful Tax Competition Review:

EN FR DE

Taxation of savings - standard format for the exchange of information

At its meeting in May, the Council adopted conclusions regarding a revised standard format for the exchange of information under Directive 2003/48/EC on the taxation of savings, as well as a list of statistics on their transmission and disclosure.

According to Article 18 of the directive the Commission is due to report to the Council on the operation of the Directive every three years and to propose any amendments to the Directive that may be required in order better to ensure effective taxation of savings on income and to remove any undesirable distortions of competition.

This time, the report will especially focus on the implementation of EU tax-evasion rules and will be followed by proposals aimed at closing loopholes allowing wealthy citizens to hide savings.

The move to change the EU Savings Tax Directive, which took 14 years to be adopted, was largely driven by Germany in response to a massive tax fraud, reported in February 2008 which created a scandal and caused a speeding up of the review process for EU savings tax rules.

Back then, Germany launched wide-ranging probes into accounts held in Liechtenstein due to the ability of wealthier Europeans to hold savings there in order to avoid EU legislation.

According to its conclusion,"the Council calls on the Commission to submit the report pursuant to Article 18 of the Directive on the taxation of savings income in the form of interest payments by 30 September 2008 at the latest, to be followed by specific proposals based on the report. Member States are asked to provide the Commission with the necessary statistical and other data."

Read more (click to open):

Savings Directive Review:

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NEWS - DIRECT TAX

EUROPEAN COMMISSION

COM soon to negotiate new savings tax deal with Norway

The Commission is expected in the near future to be given authorisation to hold talks with Norway over a new bilateral deal on equivalent measures to EU rules on savings tax. Norway has officially written to the Commission expressing interest in applying rules to tax savings of EU citizensheld in Norway and the savings of Norwegian citizens held in the EU. Its aim is to introduce a model covering mutual exchange of information, thus going further than the transparency deal negotiated between the EU and Switzerland. The European Economic Area agreement which Norway is part of does not allow EU savings tax rules to be adopted. This needs to be done through a bilateral deal which so far 5 non-EU countries and 10 Member State's overseas territories have applied.

State Aid: COM Prohibits tax exemption to Alas Slovakia

Infringement Procedure

The Commission has decided under EC Treaty state aid rules not to authorise regional investment aid in the form of tax exemptions that could amount to around €2.9 million in favour of Alas Slovakia s.r.o. The Commission's in-depth investigation, launched in Dec 2007, concluded that the proposed aid would not sufficiently contribute to regional development as to justify the distortions of competition that the granting of a selective advantage to a large company would have brought about. Neither the Slovak authorities, nor any other interested party, responded to the doubts expressed by the COM during its in-depth investigation. A negative decision was therefore inevitable. As the aid has not yet been granted, it is not necessary to order the recovery of the aid.

Read more (click to open):

Press Release:

EN FR DE

State Aid: COM refers Slovakia to the ECJ

Infringement Procedure

The European Commission has decided to refer Slovakia to the European Court of Justice concerning failure to implement the Commission's decision of 7 June 2006 ordering Slovakia to recover SKK 416.5 million (approximately €13 million) of illegal and incompatible state aid granted by the Tax Office Košice to Frucona Košice a.s.

In June 2006, the Commission declared a tax debt write-off worth SKK 416.5 million that the Tax Office Košice granted to Frucona, formerly one of the major producers of spirits in Slovakia, incompatible with EC Treaty state aid rules and ordered Slovakia to recover the money from Frucona. Slovakia has not recovered the illegal and incompatible aid, and the measures so far undertaken have not led to any effective result. Therefore, the Commission has concluded that Slovakia has failed to comply with its decision of 7 June 2006.

Read more (click to open):

Press Release:

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State Aid: COM requests information about preferential tax regimes in Italy

Infringement Procedure

The European Commission has asked Italy under EC Treaty state aid rules for information regarding preferential tax regimes for cooperatives operating in the retail, distribution and banking sectors in Italy. The Commission started reviewing the measures after receiving several complaints. The current investigation is designed to ensure that the measures are in line with the state aid rules in the future, as it appears that the measures existed before the EC Treaty entered into force and could therefore qualify as existing aid.

NEWS - DIRECT TAX

In its analysis, the Commission is carefully balancing the equity and efficiency objectives pursued by the cooperative model against any possible distortions of competition that might derive from such measures. The Commission finds at this preliminary stage that the tax measures may not constitute state aid under some conditions and that if they do they are mostly compatible. For the measures concerning large cooperatives that might not be in line with EU state aid rules, Italy has the opportunity to comment on the Commission's analysis before any conclusions are reached. The initiation of the review process does not prejudge its outcome.

Read more (click to open):

Press Release:

EN FR DE

State Aid: COM opens investigation into aid to German EverQ

Infringement Procedure

The European Commission has opened a formal investigation under EC Treaty state aid rules to clarify whether the German joint venture EverQ is a small or medium-sized enterprise (SME) as defined by the state aid rules and as such entitled to public funding in the form of an SME bonus that the Commission approved on 7 June 2006. EverQ GmbH is located in Thalheim, Sachsen-Anhalt, Germany and is active in the solar energy market. During its investigation related to another aid measure for EverQ and for which the Commission opened a formal investigation in May 2008, the Commission uncovered indications that EverQ might not have been an SME at the time it took its decision on 7 June 2006. An SME is defined on the basis of the number of employees and turnover. Data from sister or associated companies are also taken into account. The opening of an in-depth investigation gives interested parties the possibility to comment on the proposed measure. It does not prejudge the outcome of the procedure. At the conclusion of the procedure, the Commission will decide whether to revoke its decision on the 2006 state SME support to EverQ.

Read more (click to open):

Press Release:

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State Aid: COM adopts regulation automatically approving aid for jobs and growth

Infringement Procedure

The European Commission has adopted a Regulation, which will come into force in the coming weeks, giving automatic approval for a range of aid measures and so allowing Member States to grant such aid without first notifying the Commission. The Regulation authorises aid in favour of SMEs, research, innovation, regional development, training, employment and risk capital. The Regulation also authorises environmental protection aid, aid measures promoting entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems, like difficulties in access to finance, faced by female entrepreneurs. It encourages Member States to focus their state resources on aid that will be of real benefit to job creation and Europe's competitiveness. The regulation reduces the administrative burden for public authorities, the beneficiaries and the Commission. This new General Block Exemption Regulation (GBER) consolidates into one text and harmonises the rules previously existing in five separate Regulations, and enlarges the categories of state aid covered by the exemption. It will take effect 20 days after publication in the Official Journal, allowing Member States to grant better targeted aid immediately.

Read more (click to open):

Press Release:

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OTHER NEWS

EUROSTAT:
Taxation trends in the EU - strongest year-on-year increase in a decade

Eurostat and the Commission's DG TAXUD have issued the publication Taxation trends in the European Union: Data for the EU Member States and Norway. This publication compiles tax indicators in a harmonised framework based on the European System of Accountants (ESA 95) allowing accurate comparison of the tax systems and tax policies between EU Member States.

Compared to the rest of the world EU 27 tax levels remain generally high exceeding those of the USA and Japan by some 12%. However, the tax burden varies significantly between Member States.The weighted tax-to-GDP ratio in the EU27 increased to 39.9% in 2006 from 39.3% in 2005. The EU27 tax ratio is nevertheless lower than 40.3% in 1996 and the peak of 41% in 1999. Labour taxes remain the largest source of tax revenue, representing close to half of total tax receipts in the EU27.

Read more (click to open):

Press Release EUROSTAT / DG TAXUD

EN FR DE

The OECD approves the 2008 Update to the Model Tax Convention

Following an update by the Committee on Fiscal Affairs in June this year, the OECD Council has now approved the 2008 Update to the OECD Model Tax Convention which was released as a discussion draft in April 2008. The Committee carefully examined the comments received on that discussion draft and after reviewing got to the conclusion that no major additional but only a number of useful clarifying changes should be included in the update. It was also decided to release a detailed response to the comments received.The contents of the 2008 update result primarily from the three different reports.

Furthermore, the update also includes a number of technical changes as well as changes and additions that have been made to the observations, reservations and positions of member and non-member countries. It is expected that a revised version of the OECD Model Tax Convention that will incorporate the contents of the update will be released at the beginning of September.

Read more (click to open):

Press Release of the OECD

EN FR

OECD Publication
Tax Co-operation: Towards a Level Playing Field

In today's increasingly borderless world, countries are working closer together to prevent abuses of the global financial system in the field of taxation amongst others. The global Forum on Taxation, which consists of OECD and non-OECD economies, seeks to improve transparency and to establish effective exchange of information so that countries can ensure compliance with their national tax laws notably by working towards a level playing field in order to ensure the implementation of high standards of transparency and information exchange and to permit fair competition between all countries, large and small, OECD and non-OECD. This publication provides comparative data on the laws and practices of 82 countries with respect to transparency and exchange of information in taxation matters.

Read more (click to open):

More information on the publication:

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IMPRESSUM

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Layout: Maria Dantz, Communications Officer