



European Tax Report Confédération Fiscale Européenne (CFE)

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NEWS - INDIRECT TAX

European Council

Reduced VAT rates formally adopted

The EU Finance Ministers formally adopted two legislative acts in the field of VAT, which transcribe the political agreement on reduced VAT rates reached early March into the European body of law. A first directive will amend the VAT directive (2006/112/EC) to authorise Member States that so wish to permanently apply reduced taxation to certain high labour-intensive activities, authorise reduced rates for restaurant services and books, no matter their format, and approve the specific requests of Cyprus, Malta and Portugal.

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No agreement on excise duties on tobacco products

European Finance Ministers failed on 5 May to reach unanimous agreement on the reviews of rules on the excise duties on tobacco products. Poland considers the transition period suggested by the Czech Presidency, with a view to gradually introducing the rise in excise, to be too short. The dossier is referred back to the level of experts and forwarded to the future Swedish Presidency, as the Czech Republic does not wish to put this matter back on the table during the June Ecofin Council.

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UK's derogation on VAT extended

On 18 May, the Council of Ministers of the EU adopted, in every language except English (the English version was adopted on 5 May), a decision authorising the UK to extend its measure exempting it from the common system of VAT.

In view of the serious nature of VAT fraud in the country, UK had asked for authorisation to continue to apply a derogation provided for by the VAT Directive 2006/112/EC with regard to the person liable to pay VAT to the tax authorities, a measure previously granted up to 30 April 2009, by the decision 2007/250/EC of the Council of 16 April 2007. Under article 193 of directive 2006/112/EC, the taxable person is the taxpayer who delivers the goods. This derogation, which has now been extended until 30 April 2011, allows the UK under certain circumstances to apply a reverse-charge mechanism, which transfers the VAT payment obligation to the taxpayer receiving certain deliveries of mobile telephones and integrated circuit devices, if the taxable amount is equal to or higher than £5000. The objective of this derogation is to tackle certain aggressive forms of tax evasion, notably carousel fraud, when goods are delivered several times without VAT being paid to the tax authorities, but with the invoice valid for the deduction of VAT being passed on to clients. The application of the reverse-charge system, meaning that the client does not pay VAT to the supplier, removes the opportunity for this form of tax evasion.

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NEWS - INDIRECT TAX**European Commission****Infringement procedure: Poland referred to ECJ regarding VAT to cross-border transport services**

The European Commission has decided to refer Poland to the Court of Justice regarding the application of VAT to cross-border passenger transport services supplied by buses registered abroad.

According to the VAT Directive, cross-frontier transport services are subject to VAT in each Member State for the distance travelled therein. Poland has introduced a particular VAT scheme for cross-border passenger transport services supplied on an occasional basis by means of buses registered abroad. The scheme leads to VAT due in Poland being collected through payment at the border of an amount calculated on the basis of an average taxable amount per traveller. This scheme deviates from the Community rules. Furthermore, the Polish provisions lead to fiscal cross border controls, thus contravening the essential principles of the internal market.

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or not. The Commission therefore concludes that the Latvian legislation is not compatible with the VAT Directive.

Should Latvia fail to comply with the reasoned opinion within the prescribed two-month time limit, the Commission may bring this case before the ECJ.

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Infringement procedure: Latvia requested to apply VAT on land for construction

The European Commission has formally requested Latvia to stop exempting from VAT transactions involving land for construction. EU VAT rules expressly provide for VAT on supplies of land for construction. According to Article 2 of the VAT Directive all supplies of goods and services are subject to VAT except for the cases explicitly provided for in the VAT Directive. Article 135 (1) (k) of the VAT Directive explicitly requires that land for construction is taxed whilst it allows exemption of land used for other purposes.

Under Latvian VAT legislation, sale of immovable property, including land, is exempt from VAT, except when it concerns the first sale of "unused immovable property". Under the VAT Directive land for construction must be subject to VAT regardless whether it is used or not and whether it is sold for the first time

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European Council

Commission's good governance proposal

The European Commission has presented its proposals on the promotion of good governance in tax matters within the EU and in EU relations with third countries, for the EU Finance Ministers. The intention was only to inform since the issue will be put on the agenda of the June Ecofin Council which will take stock of the taxation of savings income.

On the June Ecofin Council the Finance Ministers will additionally discuss the issue of fiscal governance. One issue concerns the possible granting of mandates to the Commission to negotiate on behalf of the EU agreements on the exchange of fiscal information with non-European countries. Germany supports this. The UK believes that reflections have to be given on the most appropriate form of agreement. France asked about sanctions for non-cooperative countries. According to Austria, including provisions on the exchange of information in agreements is useless if the rules can be easily circumvented, for example, by creating legal structures that avoid taxation of savings. Luxembourg felt that the Commission has changed its position on the review of the directive on savings taxation.

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The Swedish EU presidency will push for CO2 tax

Sweden wants to push for a tax on CO2 in sectors that do not participate in the EU's emissions trading scheme (EU ETS) during its Presidency (starting 1 July 2009).

Together with Norway, Sweden was one of the first countries to introduce a tax on carbon emissions back in 1991. Customers already pay 2.34 kronor (ca €0,25) per litre for their fuel, and the government's proposed climate bill would hike up the price of diesel further, and link vehicle registration fees to carbon emissions.

According to the Swedish government the present system of EU emissions trading scheme (EU ETS) has a cap on 40% of emissions, referring to the EU cap-and-trade system for carbon dioxide emissions. In relation to this Sweden believes that the remaining 60% also need to come down, and that one of the best ways to achieve this is by a climate tax such as a CO2 tax.

Apart from Sweden, other EU countries levying taxes on carbon emissions from fuel, light industry and agriculture include Finland, Denmark and Slovenia. Sweden is hoping to gather further support for its proposal by highlighting how well a carbon tax has worked at national level. The Swedish government is unhappy with the way the European Commission has been delaying debate on the issue, taking the economic crisis as a pretext.

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European Commission

Infringement procedure: Poland requested to end taxation of foreign funds, and financial institutions

The European Commission has sent a reasoned opinion (second step of the infringement procedure provided for in Article 226 of the EC Treaty) to Poland with regard to its legislation which provides for higher taxation of interest and dividends paid to foreign pension funds and investment funds and higher taxation of interest paid to foreign financial institutions.

Poland exempts Polish pension and investment funds from corporation tax. Therefore, all dividends and interest that such domestic funds receive are tax exempt. However, dividends paid from Poland to foreign pension and investment funds are subject to a withholding tax of 19 %, unless a tax treaty provides otherwise. Likewise, interest paid from Poland to foreign pension and investment funds is subject to a withholding tax of 20 %, unless a tax treaty provides otherwise. The Commission considers that these rules constitute a restriction on the free movement of capital guaranteed by Article 56 of the EC-Treaty and the freedom of establishment pursuant to Article 43 of the EC-Treaty.

NEWS - DIRECT TAX

Additionally non-resident financial institutions are subject to Polish withholding tax on the gross amount of the interest received, whereas domestic financial institutions are taxed only on their net profits, i.e. after deduction of related costs such as the interest they pay to their creditors. The Commission is of the opinion that Poland has in this case failed to fulfil its obligations under Article 49 and Article 56 of the EC Treaty, i.e. the freedom to provide services and the free movement of capital.

If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the ECJ.

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Infringement procedure: Austria requested to amend rules related to appointment of fiscal representatives

The European Commission has formally requested Austria to change its tax provisions related to the appointment of a fiscal representative. The Commission considers that the rules which request foreign investment funds, real estate funds and credit institutions to appoint a fiscal representative result in discriminatory treatment. The Commission also considers discriminatory the prohibition for foreign credit institutions and certified public accountants to be appointed as fiscal representative for investors in investment fund or real estate fund and considers these rules to be incompatible with the freedom to provide services.

Under Austrian rules, domestic credit institutions managing domestic investment funds or real estate funds are exempted from the requirement to appoint a fiscal representative. On the contrary, foreign investment funds and real estate funds must always appoint a fiscal representative when carrying out operations in Austria. Moreover, foreign credit institution managing domestic investment funds or real estate funds must also appoint a fiscal representative.

In addition, Austrian rules introduce a discrimination against foreign credit institutions and foreign certified public accountants. Only a domestic credit institution or domestic certified public accountant can be appointed as a fiscal representative for investors in an investment fund or real estate fund.

The Commission is of the opinion that Austria has in both cases failed to fulfil its obligations under Article 49 of the EC Treaty and Article 36 of the EEA Agreement, i.e. the freedom to provide services.

The request takes the form of a reasoned. If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the ECJ.

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OECD

Andorra, Liechtenstein and Monaco removed from OECD list of uncooperative Tax Havens

In the light of the commitments made by Andorra, Liechtenstein and Monaco to implement the OECD standards of transparency and effective exchange of information and the timetable set for the implementation, the OECD has decided to remove all three jurisdictions from its *List of Uncooperative Tax Havens*.

It is now considered that these jurisdictions have committed to the internationally agreed tax standard but not yet substantially implemented it, as shown in the Progress Report initially issued by the OECD Secretariat on 2 April. The OECD expects that all three jurisdictions swiftly will implement their commitments.

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Luxembourg and the US signed agreement on exchange of information

On 20 May, Luxembourg and the United States signed an agreement introducing exchange of information on request between their administrations, in the event of tax evasion. The text, which takes the form of a memorandum of understanding amending provisions of the 1996 bilateral treaty, is in line with OECD standards on tax information upon request. The OECD welcomes the speed with which Luxembourg has withdrawn its reservation to the OECD standard on exchange of information. Luxembourg has within a matter of weeks renegotiated its agreement with the United States to allow for the exchange of bank information on request in all tax matters. Luxembourg may conclude about 20 conventions of this kind with OECD member nations by the end of 2009 and thus disappear from the "grey list" of organisations on which it had been placed after the G20.

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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) and Union Professionnelle des Sociétés d'Avocat (UPSA), 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](#).

IMPRESSUM



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