European Tax Report
Confédération Fiscale Européenne (CFE)
June 2010 / Edition 6

NEWS - INDIRECT TAX

Commission refers seven member states to Court over VAT grouping rules

On 24 June 2010, the European Commission has decided to refer the Netherlands, Ireland, Finland, Sweden, the UK, the Czech Republic and Denmark to the Court of Justice for failure to respect the VAT grouping rules. VAT grouping is allowed for the purpose of administrative simplification under the VAT Directive, which gives Member States the option to treat those who are legally independent but closely bound to one another by financial, economic and organisational links as one single taxable person.

In July 2009, the Commission adopted a communication on the VAT grouping option, setting out how the provisions on VAT grouping in EU legislation should be applied in practice, in a way that respects the basic principles of the EU VAT system and ensures that it has no adverse impact on the Internal Market.

Having examined national provisions on this issue, the Commission found that the legislation in seven Member States was incompatible with the EU rules on VAT grouping. For NL, IE, FI, UK, CZ and DK, the problem is that they allow non-taxable persons to join a VAT group. This is not in line with the provisions of the VAT Directive. Proceedings against SE and FI are due to the fact that these Member States limit the VAT grouping system to financial and insurance services. EU VAT grouping rules do not allow for such a sectoral limitation. For NL, the proceedings also cover the failure to notify changes to the application of their VAT grouping scheme to the VAT Committee.

READ MORE *(click to open)*:

Press release: **EN FR DE DK NL SE FI CZ**

Commission wants to keep 15% minimum VAT rate beyond 2010

On 24 June 2010, the European Commission has proposed a directive prolonging the minimum standard VAT rate of 15% until the end of 2015. The current minimum rate is in place since 1993 and has been prolonged four times already. The Commission considers that the benefit from the achieved harmonisation would be lost if VAT rate competition among member states became stronger.

READ MORE *(click to open)*:

Proposal: **EN FR DE**

EU Council reaches agreement on fighting VAT fraud and creating Eurofisc

The Ecofin Council of 8 June 2010 reached political agreement on a draft regulation enabling member states to increase their efforts to combat VAT fraud and establishing the Eurofisc network of national tax officials to detect and combat cross-border VAT fraud cases. The final text shall be adopted at the forthcoming Ecofin meeting on 13 July 2010.

READ MORE *(click to open)*:

Press release: **EN**

Commission calls on Belgium to amend its rules on reduced VAT rates for transactions involving buildings

On 3 June 2010, the European Commission has demanded Belgium to amend its legislation applying, subject to certain conditions, the 6% reduced rate to supplies of residential buildings and building works. Under Belgian law, a reduced rate is applied to the first € 50,000, while the balance of the taxable amount remains subject to the standard rate of 21%. The VAT Directive which lists the operations that may be subject to the 6% reduced rate of VAT includes the „provision, construction, renovation and alteration of housing, as part of a social policy“. This social policy reference however is not demanded by Belgian law.

READ MORE *(click to open)*:

Press release: **EN FR DE NL**

ECJ allows German VAT exemption for certain forms of gambling

On 10 June 2010, the European Court of Justice ruled that it is within the discretionary power of member states to limit and to make conditional the VAT exemption of certain forms of gambling (C-58/09, Leo-Libera).

READ MORE *(click to open):*

Judgment: **EN** **FR** **DE**

ECJ rules on excise duty documentation for tobacco products

On 17 June 2010, the European Court of Justice held that products subject to excise duty (such as manufactured tobacco) which are manufactured from products not subject to excise duty (such as raw tobacco) and imported into the Community under the inward-processing procedure are to be deemed to be subject to duty-suspension arrangements, even if they have become products subject to excise duty only by virtue of having been processed within Community territory. Accordingly, no administrative or commercial document may be demanded by authorities when these products move between member states (C-550/08, British American Tobacco).

READ MORE *(click to open):*

Judgment: **EN** **FR** **DE**

Commission refers France to the Court for super-reduced VAT rates and tobacco limitations for private persons

On 24 June 2010, the European Commission has decided to refer France to the EU Court of Justice for failure to comply with Community rules on the super-reduced rate of VAT for certain theatre performances and for limiting the quantity of manufactured tobacco that can be purchased by private individuals in other Member States.

As a general rule of the VAT Directive, the minimum reduced VAT rate is 5%. Temporary measures allow member states to continue applying lower rates that were in place at the beginning of 1991 but these rates may not be extended to new areas. France had been applying a rate of 2.1% to tickets for the first 140 performances of theatre productions under the condition that no refreshments were served during the performance. The Commission contests that that condition has later been deleted.

French legislation provides for strict limits on the quantities of manufactured tobacco that may be transported (1 kg) and held (2 kg) in France by private individuals who purchased it in other Member States. Such limits do not exist in EU law, provided that the products are intended for own consumption and be transported by the private individuals themselves. According to the Commission, the amount of the tobacco cannot be applied as sole criterion.

READ MORE *(click to open):*

Press Release: **EN** **FR** **DE**

Aircrafts, horses, water sports: Commission requests Ireland, the Netherlands, Poland and Austria to change preferential VAT treatment

On 24 June 2010, the Commission sent reasoned opinions, the second step of infringement proceedings, to the said member states.

The Netherlands were requested to change their VAT exemptions for water sports activities as the scope of the exemption is considered to be too wide, covering also activities not closely linked to sport or physical education. The Irish case concerns a reduced VAT rates for horses and greyhounds that does not appear to have a clearly defined social reason or to benefit the final consumer. The Polish case concerns VAT exemptions for transactions related to aircrafts. The VAT directive does not know any criterion like the weight of the aircraft as it is contained in Polish law. The Austrian case, too, relates to aircrafts, namely VAT exemptions for aircraft used by state institutions deemed incompatible with the VAT directive.

READ MORE *(click to open):*

Press Release: **EN** **FR** **DE** **NL** **PL**

NEWS - INDIRECT TAX

Advocate-General delivers opinion in VAT fraud case "R"

On 29 June 2010, Advocate-General Pedro Cruz Villalón delivered his opinion on the case C-285/09, "R". The request for a preliminary ruling on the VAT exemption of intra-community deliveries was referred to the Court by the German Supreme Court (BGH). The question was essentially whether the country of origin of the goods may refuse the vendor who is established and liable to tax in this country a tax exemption if the vendor has actually effected a intra-community delivery but has not declared specific facts concerning the operation and thereby enabled the buyer established in the country of destination to evade tax. Mr Cruz Villalón is of the opinion that a tax exemption should be granted regardless of whether the vendor was in good faith or not. Even though a sanction would be desirable, the vendor would have to be sanctioned in a way compatible with the VAT Directive.

READ MORE *(click to open)*:

Opinion: ES FR DE EL IT LV NL PT FI SE

Advocate-General opinion on VAT exemption for very small enterprises established in Austria

On 17 June 2010, Advocate-General Juliane Kokott submitted her opinion on the Austrian VAT exemption for very small enterprises in the case C-97/09, Schmelz, relating to a request for a preliminary ruling by the Independent Tax Tribunal (Unabhängiger Finanzsenat) of Vienna. The VAT exemption is only available to economic operators established in Austria. Juliane Kokott considers that the requirement of establishment contained in the VAT directive can be interpreted in a way that is in conformity with the EC Treaty and that the Austrian court should check whether Austrian law would allow such an interpretation of the national VAT legislation.

READ MORE *(click to open)*:

Opinion: EN FR DE

Commission publishes study on excise duties for alcoholic beverages

The study on the minimum rates and structures of excise duties on alcoholic beverages was published on 28 June 2010.

READ MORE *(click to open)*:

Study: EN

NEWS - DIRECT TAX

Commission opens public consultation on cross-border inheritance tax

The European Commission launched a public consultation on problems related to cross-border inheritance tax within the EU. From an increasing number of inheritance tax cases since 2003, the Commission has gained the impression that inheritance tax rules are hindering EU citizens from moving and operating freely across borders within the internal market. The purpose of the current consultation is the collection of evidence of both discriminatory taxation by one member state and double taxation situations. Participants are also invited to suggest solutions and comment on a possible binding mechanism of EU law.

The consultation which addresses all interested stakeholders was started on 25 June 2010 and is open until 22 September 2010.

READ MORE *(click to open)*:

Public consultation paper: EN FR DE

Commission website: EN FR DE

Commission asks Belgium to change provisions on inbound dividends and foreign investment companies

On 3 June 2010, the European Commission has sent two reasoned opinions to Belgium:

The first request refers to Belgian rules regarding certain inbound dividends received by natural persons. Under Belgian law, residents in Belgium pay a tax of 15 % on dividends paid by a Belgian company of which the majority of the shares are held by natural persons or of which part of the capital is contributed by a private investment company established in Belgium. Dividends paid out by similar companies resident in other European Economic Area countries are subject to a tax rate of 25%. The Commission considers that the Belgian provisions are discriminatory and restrict the free movement of capital and the freedom of establishment.

The second reasoned opinion refers to legislation which discriminates against foreign investment companies. Under Belgian law, Belgian investment companies do not effectively pay tax on their Belgian-sourced interest and dividend income as they get a refund for this kind of income. Foreign investment companies have to pay withholding taxes of 15 or 25 % on their Belgian-sourced interest and dividend income and cannot claim refunds. The Commission considers that the Belgian law is discriminatory and restricts the free movement of capital and the freedom of establishment.

READ MORE *(click to open):*

Press Release: **EN** **FR** **DE** **NL**

Commission goes to Court over Austrian provisions on fiscal representatives, German rules on foreign pension institutions and Portuguese outbound dividends taxation

The European Commission referred Austria, Germany and Portugal to the European Court of Justice on 3 June 2010 over discriminatory tax provisions:

Austrian rules on fiscal representatives

The Commission criticises the Austrian rules which request foreign investment funds, real estate funds and credit institutions to appoint a fiscal representative established in Austria when carrying out operations in Austria. The Commission considers that these provisions are incompatible with the freedom to provide services and discriminate foreign investment funds, real estate funds and credit institutions as well as foreign certified public accountants which, as a result of this rule, cannot be appointed as fiscal representatives.

German taxation of foreign pension institutions

In Germany, dividends paid by German companies to German “Pensionskassen” are either subject to a reduced withholding tax rate, or the “Pensionskasse” can benefit from a partial refund of the withholding tax paid. However, similar institutions established elsewhere in the EU and in the European Economic Area cannot benefit from this reduced rate or partial refund. For another category of German pension institutions, the „Pensionsfonds“, the dividends received are taken into account in the annual tax assessment procedure and are taxed on a net basis at the general corporate tax rate of 15 %. However, dividends paid from Germany to similar foreign institutions are subject to a final withholding tax of 25 % on the gross dividend, without the possibility of deducting any costs. A similar distinction is made between interest payments paid to „Pensionskassen“ and „Pensionsfonds“ or to a foreign pension institution.

Portuguese taxation of outbound dividends

Portuguese tax rules may in certain cases lead to higher taxation of dividend payments to foreign companies (outbound dividends) than dividend payments to domestic companies (domestic dividends). While the legislation provides for no or only very low taxation of domestic dividends, outbound dividends are subject to withholding taxes up to 20%. The Commission considers that these rules restrict both the free movement of capital and the freedom of establishment.

READ MORE *(click to open):*

Press Release: **EN** **FR** **DE** **PT**

Webpage on inheritance issues in EU and Croatia

The Council of the Notaries in Europe (CNUE) has, with the support of the European Commission, published an overview on legal aspects of inheritance law including tax issues covering all 27 EU member states plus Croatia in all the respective languages.

READ MORE *(click to open):*

Website: **EN** (follow link for all 23 language versions)

NEWS - DIRECT TAX

Commission requests UK to amend income tax exemption for seafarers

The European Commission has requested the United Kingdom to change its income tax provisions which allow a tax deduction for the earnings of seafarers which, in practice, has the effect of exempting all their relevant earnings from income tax. This right however, is only granted to seafarers resident in the UK. The Commission considers these rules to be discriminatory and to constitute a restriction on the free movement of people.

READ MORE *(click to open):*

Press Release: **EN** **FR** **DE**

Commission asks Luxembourg to amend inheritance tax provisions

On 24 June 2010, the European Commission has officially asked Luxembourg to amend its legislation on inheritance tax. This legislation stipulates additional conditions for non-resident heirs and, in particular, freezes their entire estates until they provide ‚an additional guarantee‘:

When a resident dies, the government of Luxembourg is owed a debt equivalent to the amount payable in inheritance tax by the heir. In order to recover this debt, the government of Luxembourg can avail itself of certain guarantees: a privileged lien on all the movable property and/or a legal mortgage on all the immovable property located in Luxembourg bequeathed in the inheritance. A non-resident heir has to provide an additional guarantee for the payment of the amount due before being able to take possession of the inheritance. The amount of the guarantee is set by the judge. If the heir is not able to provide such a guarantee, the inherited assets are frozen until the guarantee has been put in place. This freeze rule does not apply to resident heirs and therefore constitutes a discriminatory practice. The Commission takes the view that this discriminatory arrangement is disproportionate and that it is contrary to the provisions of the Treaty on the Functioning of the EU concerning the free movement of capital.

READ MORE *(click to open):*

Press Release: **EN** **FR** **DE**

Council adopts resolution on coordination of anti-abuse provisions

On 8 June 2010, the Ecofin Council adopted a resolution on the coordination of the member states‘ tax policies with regard to anti-abuse provisions.

READ MORE *(click to open):*

Draft Resolution: **EN**

OECD invites comments on the transfer pricing aspects of intangibles

The OECD is considering starting a new project on the transfer pricing aspects of intangibles which could result in a revision of Chapters VI and VIII of the OECD transfer pricing guidelines. Therefore the OECD Committee on Fiscal Affairs would welcome the views of interested parties on what they see as the most significant issues encountered in practice in relation to the transfer pricing aspects of intangibles, what shortfalls, if any, they identify in the existing OECD guidance, what the areas are in which they believe the OECD could usefully do further work and what they believe the format of the final output of the OECD work should be. Comments should be sent before 15 September 2010.

READ MORE *(click to open):*

News Release: **EN** **FR**

Council would like to see principles of Code of conduct on harmful tax competition applied in Switzerland and Liechtenstein

In its conclusions adopted on 8 June 2010, the Council asks the Commission to enter into a dialogue with Switzerland and Liechtenstein on the application of the principles and criteria of the Code.

READ MORE *(click to open):*

Press Release: **EN** **FR** **DE**

Other Tax Policy

Eurostat publishes "Taxation Trends 2010"

On 28 June 2010, Eurostat published its annual brochure "Taxation Trends" listing data on tax rates in all EU countries plus Norway and Iceland, containing among others a comparison of VAT rates, top income tax rates, tax revenue as a percentage of GDP and implicit tax rate for different kinds of economic activity and showing the development of these figures from 2000 to 2010. The figures demonstrate once more the long-term development of decreasing (expecially corporate) income tax rates and increasing VAT rates.

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

Eurostat Press Release: **EN** **FR** **DE**

Commission website: **EN** **FR** **DE**

Commission publishes Taxation Paper on tax treatment of company cars

The paper written by the consultancy Copenhagen Economics was published on 7 June 2010. It seeks to analyse to what extent a beneficial taxation of company cars has distorting effects and creates welfare costs to society, e.g. through promoting environmentally harmful behaviour.

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

Taxation paper no. 22: **EN**

European Commission calls on Finland to ensure personal tax data is protected by EU rules

The European Commission warned Finland on 3 June 2010 that its data protection law may be breaking EU rules because it does not protect personal tax information published in the media. Finnish taxpayers' personal data is available to the public and is being collected by businesses for sale as special publications, CDs and text messages. Finnish data protection rules do not cover personal data that has been made public in the media. Under EU rules, personal data may only be collected for legitimate purposes, and may only be further processed for the specific purposes for which it was collected. In a letter of formal notice, the first stage in the infringement process, the Commission asked Finland for more information on how it will ensure that personal tax data is protected, as required by EU rules.

On 16 December 2008, the ECJ, responding to a request from the Finnish Supreme Administrative Court, ruled that the collection and sale of personal tax data did not constitute a journalistic purpose and was therefore not covered by the derogation in Article 9 of the EU Data Protection Directive. Finland has to date remained silent on how it intends to amend its legislation.

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

Press Release: **EN** **FR** **DE** **SE** **FI**

Tax priorities of the Belgian EU presidency

The Belgian EU Council presidency which started on 1 July 2010 has explained its tax priorities in its presidency programme: In direct tax, Belgium intends to continue discussions on methods for the extension and improvement of levies on savings income within the EU and regarding other countries, seek agreement with non-EU countries on cooperation and exchange of information and on acceptance of good governance principles and support the "Code of conduct" groups in the field of business taxation. In indirect tax, the work on the treatment of insurance and financial services will be continued, a special framework for travel agencies and for vouchers will be encouraged and the VAT handling of postal services further discussed. The minimum standardised VAT rate will be another issue. The extension of the reverse charge mechanism for more types of goods, e.g. gas and electricity or the possibility of more member state derogations will be discussed. Belgium will further promote a shift from taxation on labour towards taxes on environmentally harmful behaviour, waiting for a Commission proposal for an energy taxation directive. The Belgian presidency also intends to continue work on a global financial transaction tax.

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

Belgium EU Presidency Programme: **EN** **FR** **DE** **NL**

Procedural Law

EP votes for translation rights for EU citizens in criminal trials

On 16 June 2010, the EP adopted a draft Directive guaranteeing that EU citizens facing criminal trials in another member state can have the proceedings translated into their own language. The new Directive will establish EU-wide minimum standards on the right to interpretation and translation in criminal cases which will also apply to the execution of a European Arrest Warrant. These rights would cover the whole period of time starting when the person is made aware that they are suspected or accused of committing a criminal offence until the conclusion of the proceedings, including sentencing and the result of any appeal. Interpretation and translation must be provided into the accused person's native language or any other language that they understand and that allow them to exercise fully the right to defend themselves. All essential documents, including decisions depriving a person of his liberty, the charge/indictment and any judgment, should also be translated.

The costs of implementing this directive will be covered by the member states, irrespective of the outcome of the proceedings. The new directive is the first step in a series of measures designed to lay down common EU standards in criminal law cases. It is also the first EU criminal justice legislation negotiated between EP and Council under co-decision. Member states will have three years to transpose the directive. The UK and Ireland have opted into this legislation but Denmark has not.

READ MORE *(click to open)*:

Decision: **EN** (follow link to 21 other language versions)

Press Release: **EN** (follow link to 21 other language versions)

IMPRESSUM

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