



## European Tax Report Confédération Fiscale Européenne (CFE)

26 July 2007 / Issue 5

### NEWS - INDIRECT TAX

## EUROPEAN COMMISSION

### VAT reduced rates

The European Commission has adopted a Communication on reduced rates for VAT. The paper is based on a study conducted by an independent economic Think Tank.

Currently reduced VAT rates differ enormously not only between different sectors but also within the sectors itself. About one third of the total EU25 consumption is subject to non standard rates with the EU average of non-standard rate being 9 percent. A main conclusion of the study is that a single uniform VAT rate would be the best policy choice from an economic point of view. The experts give three reasons for this conclusion: a single VAT rate would slightly increase consumer welfare, it would imply substantial savings for business and tax administrations due to reduced administrative burdens and the distortion of the functioning of the Internal Market would be improved.

### Devil in the detail

However reduced VAT rates do not automatically create the desired effect. For example if lower rates on food are applied in order to improve the income distribution there will be a mechanical revenue loss because high income households will also benefit from lower VAT. Further the interaction of different measures must be carefully considered to ensure budget neutrality. If for example lower VAT on locally supplied services is financed by higher marginal income taxes, the desired effect may be nullified. In general the Commission paper points out that other economic instruments (such as subsidies) might often be more efficient than reduced VAT rates to achieve the intended objectives.

### Common rules after 2010?

Derogations from Directive 112/2006/EC granted to Member States which joined the EU before 1 January 1995 remain in force until the adoption of a definitive VAT system, whereas many reduced rate derogations of the other Member States expire at

the end of 2007 or 2008. The European Commission therefore proposes to extend the current reduced rate derogations until the end of 2010 so that it can design new common rules to apply after 2010 without being under time pressure.

### Read more (click to open):

Press Release by the European Commission on VAT reduced rates

languages: [EN](#) [FR](#) [DE](#)

Memo on FAQ by the European Commission

language: [EN](#)

General information on VAT rates by the European Commission / DG TAXUD

languages: [EN](#) [FR](#) [DE](#)

### European Commission's proposal on minimum excise duties

Council Directive 92/83/EEC defines the categories of alcohol and alcoholic beverages which are subject to excise duty and the basis on which the excise duty is calculated. The minimum excise duties were introduced in 1993 to ensure smooth operation of the Internal Market. On 8 September 2006 the European Commission proposed Directive COM (2006) 486 which would amend the original one by introducing new minimum rates in line with inflation. Depending on national provisions, the increase could be up to 31% and would take effect in January 2008 with a transitional period until 2010.

### Advisory position

With regard to tax matters the position of the European Parliament is advisory. Any final decision must be taken unanimously by the Council of the EU.

**Read more (click to open):**

Press Release by the European Parliament

languages: [EN](#) [FR](#) [DE](#)

Council Directive 92/83/EEC

languages: [EN](#) [FR](#) [DE](#)

Proposed Directive (2006) 486 by the European Commission

languages: [EN](#) [FR](#) [DE](#)

**COUNCIL OF THE EU**

The Council of Economic and Financial Affairs adopted a decision authorizing Austria to conclude an agreement with Switzerland on the taxation of imports in relation to a cross-border power plant. The derogation from EU common rules on value added tax (VAT) implies that imports from Switzerland to Austria (or vice versa) by taxable persons with a full right of deduction will not be subject to VAT.

**Read more (click to open):**

Press Release Council Meeting Economic and Social Affairs, p. 7 and 17

language: [EN](#)

Website of the Portuguese Presidency

language: [EN](#)

**EUROPEAN COURT OF JUSTICE****VAT: Italy, Spain and France are referred to the Court of Justice**

Under Italian legislation, taxable persons established in Italy but having their main place of establishment outside the country are requested to recover VAT paid according to the refund procedures provided for in the 8<sup>th</sup> or 13<sup>th</sup> VAT directive. The European Commission took the view that those persons must be able to recover input VAT as a general rule through the standard deduction mechanism and not by way of VAT refund procedures laid down in the Directives. As Italy did not amend its legislation accordingly within the given timeframe of two months, the European Commission referred the case to the European Court of Justice.

**Immovable property register**

In Spain, “registradores de la propiedad” have two main tasks. Firstly these professionals are selected by the Spanish government to deal with the management of the immovable property register. Secondly they are entrusted by the regional governments with certain tasks relating to inheritance and property transfer taxes; namely their calculation and collection. The latter services are not subject to VAT. The European Commission holds the view that the “registrator” must be classified as an “independent professional” and is therefore subject to VAT.

Two recent cases support this view: Case 235/85 made it clear that Dutch notaries who perform comparable functions to the “registrados” are subject to VAT and in Case-202/90 the Court decided that “zone tax collectors” within the local authorities are equally subject to VAT.

**France: services supplied by lawyers within the framework of legal aid („aide juridictionnelle“)**

France applies a reduced VAT rate (5,5%) to services provided by lawyers within the framework of legal aid („aide juridictionnelle“). Under this framework, the services provided are totally or partially paid by the State. Under Community legislation, the supplies of goods and services subject to VAT are normally subject to a standard rate of at least 15%, but the Member States may opt to apply one or two reduced rates of no less than 5% to a restricted list of goods and services. However, this list does not include services provided by lawyers.

**Read more (click to open):**

Press Release by the European Commission on infringement procedures against Italy, Spain and France

languages: [EN](#) [FR](#) [DE](#)

## **Judgment C-277/05 Société thermale d'Eugénie-Les-Bains**

This reference for a preliminary ruling relates to the interpretation of Articles 2(1) and 6(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes. The reference related to domestic proceedings concerning the application of value added tax ('VAT') to deposits collected by Société thermale on the reservation of hotel rooms which it retained following the cancellation of some reservations. The question referred was whether or not VAT was payable on these deposits retained in the event of a cancellation by the customer. The court ruled that it was not stating "in the context of a contract relating to the supply of hotel services which is subject to VAT, is to be regarded, where the client exercises the cancellation option available to him and that sum is retained by the hotelier, as a fixed cancellation charge paid as compensation for the loss suffered as a result of client default and which has no direct connection with the supply of any service for consideration and, as such, is not subject to that tax."

**Read more (click to open):**

Judgment C-277/05 by the European Court of Justice

languages: [EN](#) [FR](#) [DE](#)

## **EUROPEAN COURT OF JUSTICE**

### **Taxation and Freedom of establishment / C-231/05 Oy AA**

On 18th July the ECJ delivered its decision in the Oy AA case. This case arose from a reference for a preliminary ruling by the Finnish Supreme Administrative Court to the ECJ on a point of Finnish national law. Finland allows a tax deduction for a financial transfer made by one group company to another once certain conditions are met. One such condition is that the transferor and transferee are both Finnish companies. The national court referred to the ECJ for a ruling as to whether this was incompatible with EU law. Oy AA, a Finnish company, sought a deduction for an "intra-group financial transfer" to its indirect parent, a UK company called AA Ltd. AA Ltd was running at a loss. The court found that subsidiaries of foreign parent companies are at a disadvantage because of the distinction made between them and companies with Finnish parents. The court found that "such a difference in treatment constitutes a restriction on the freedom of establishment". However, the ECJ ruled that this restriction was compatible with Community law as there were overriding reasons in the public interest for such a restriction.

#### **Justification for the restriction**

According to the ECJ, the two overriding justifications for the restriction were as follows:

- Accepting that an intra-group cross-border payment is tax deductible in the transferor's member state would "undermine the system of the allocation of the power to tax between Member States". It would allow companies to choose freely the Member State in which to tax profits by moving them from one country to another.
- Allowing the deductibility of such a financial transfer to a parent in another Member State could also mean that "by means of purely artificial arrangements, income transfers may be organised within a group of companies towards companies established in Member States applying the lowest rates of taxation or in Member States in which such income is not taxed." The court answered the question in light of Article 43 EC Treaty alone, which provides for the freedom of establishment.

**Read more (click to open):**

Press Release by the European Court of Justice on C-231/05 Oy AA

languages: [EN](#) [FR](#)

Judgment of C-231/05 Oy AA

languages: [EN](#) [FR](#) [DE](#)

Greece (20%). These regulations are not compatible with the free movement of capital. The European Commission therefore sent a reasoned opinion on 3 January 2007 but Greece has not yet taken any steps to change its legislation. Thus the case has been referred to the European Court of Justice (2006/2241).

**Read more (click to open):**

Press Release by the European Commission on non-Greek partnerships

languages: [EN](#) [FR](#) [DE](#)

**Income Tax: Judgment C-182/06**

This case related to Article 39 EC Treaty which provides for the free movement of workers. The court ruled that Article 39 EC is to be interpreted as precluding national legislation that doesn't entitle a Community national who is not resident in the Member State (say State A) in which he receives income that constitutes the major part of his taxable income to request, for the purposes of determining the relevant tax rate to be applied to the income, that negative rental income relating to property situated in another Member State (State B) which he does not himself occupy be taken into account, whilst a resident of the first State (State A) can request that such negative rental income be taken into account.

**Read more (click to open):**

Judgment C-182/06 by the European Court of Justice

languages: [EN](#) [FR](#) [DE](#)

**EUROPEAN COMMISSION****Discriminatory taxation of lottery winnings**

Lottery winnings from abroad are subject to progressive income tax under Spanish tax law whereas exemptions from income tax apply for the winnings from lotteries organised in Spain by certain institutions. The European Commission considers these rules contradictory to EC rules and the EEA Agreement as they restrict the freedom of services.

Spain argues that the exemption is not discriminatory as it is based on the nature of the organizers (e.g. Spanish Red Cross) and not on the place of their establishment. In contrast the European Commission holds the view that the favourable treatment is only open to those mentioned in the purpose of the exemption and therefore is discriminatory. As the Spanish government did not amend its legislation after receiving the Reasoned Opinion in December 2006, the case has now been referred to the European Court of Justice (2005/2431).

**Discriminatory taxation of non-Greek partnerships**

The European Commission has decided to refer Greece to the European Court of Justice as, due to Greek tax rules, non-resident partnerships in Greece are taxed more heavily (25%) than those resident in

**Read more (click to open):**

Press Release by the European Commission on lottery winnings

languages: [EN](#) [FR](#) [DE](#)

## State Aid – Subsidies for digital equipment in Italy

The European Commission has endorsed subsidies for equipment for the reception of digital television. Since December 2006 income tax deductions are granted to consumers who purchase television sets with integrated tuner and digital recorders under Italian law. The European Commission concluded in their investigation that this measure is technology-neutral and proportionate to the objective of promoting the transition to digital TV and to interoperability.

### State support for digital television

In 2005 the European Commission recognised that the switchover to digital television may need the support of the state (regulation, financial support, information campaigns, etc;) in order to timely. Therefore Member States are entitled to introduce certain measures as long as they are based on objective criteria. “The Commission is firmly committed to encouraging the transition to digital TV, which has many advantages for consumers and innovation.

### Objective criteria

However, state support must be based on objective criteria, address specific issues where the market does not provide solutions and avoid distortions of competition, particularly between terrestrial, cable and satellite platforms”. outlined Neelie Kroes, European Commissioner for Competition.

#### Read more (click to open):

Press Release by the European Commission subsidies for digital equipment

languages: [EN](#) [FR](#) [DE](#)

## Discriminatory taxation of dividends from foreign companies

Under Greek law dividend income is exempt from tax if it is are paid by companies established in Greece. No exemption is granted for dividends paid by com-

panies abroad. The European Commission is of the opinion that this rule is not compatible with the EC Treaty which guarantees the free movement of capital. In the past the European Court of Justice ruled in the Verkooijen (Case C-35/98) that a different treatment of dividends according to their origin constitutes a restriction of this freedom.

### Communication on Dividend taxation of individuals

The European Commission opened this case in follow-up to its Communication “Dividend taxation of individuals in the Internal Market” (COM(2003)810). One of the communications main conclusions was that dividends paid from another Member States should not be taxed differently from dividends paid within a Member State.

### Referred to the European Court of Justice

As the Greek government did not amend its legislation after having received the reasoned opinion on 18 October 2006, the European Commission referred the case to the European Court of Justice (2006/4044).

#### Read more (click to open):

Press Release by the European Commission on taxation of dividends

languages: [EN](#) [FR](#) [DE](#)

Communication (COM(2003)810) on Dividend taxation of individuals in the Internal Market

languages: [EN](#) [FR](#) [DE](#)

## Income tax and social insurance refund mechanism for Swedish shipping

The European Commission has approved the modified reintroduction to refund seafarer’s income tax deducted at source as well as employers’ social insurance contributions. These modifications apply only to seafarers liable to Swedish tax who work on Swedish flagged vessels. The intention is to support European

maritime fleets in order to preserve employment and maritime know-how in the Community.

The European Commission considered that the measures are compliant with Community rules as they are transparent and apply only to a certain group of persons (Swedish seafarers). The modified scheme will be in force by January 2011.

## NEWS - OTHER

### State Aid – Tax reduction

#### For the free zone of Madeira for the period 2007-2013

The Portuguese island of Madeira has been allowed to introduce a scheme of corporate tax reductions worth €300 million. Until 2020 companies will benefit from a reduced tax rate of 3% in 2007-2009, 4% in 2010-2012 and 5% in 2013 and 2020.

The European Commission has approved these measures under the EC State Aid rules to promote regional development by enabling companies established in this outermost region to overcome their structural handicaps. “The aid will contribute to attract investment and economic activity to Madeira, supporting cohesion in the EU and regional development in this outermost region”, stressed Neelie Kroes, Commissioner for Competition.

#### Read more (click to open):

Press Release by the European Commission on refund mechanism in maritime transport

languages: [EN](#) [FR](#) [DE](#)

### Car taxation in Finland

According to Council Directive 83/182/EEC a person staying for a limited time in a foreign Member State should be exempt from vehicle registration tax. Under the Finnish system it is not explicitly certain that this rule applies to a person staying there for such a definite duration. The European Commission sent a reasoned opinion to Finland in December 2006 but up until now Finnish law has not been amended. Therefore the European Commission has referred the case to the European Court of Justice (2006/4144).

#### Read more (click to open):

Press Release by the European Commission on state aid for Madeira

languages: [EN](#) [FR](#) [DE](#)

#### Read more (click to open):

Press Release by the European Commission on car taxation in Finland

languages: [EN](#) [FR](#) [DE](#)

Council Directive 83/182/EEC

languages: [EN](#) [FR](#) [DE](#)

### Excise duty - Taxation of electricity

The European Commission has decided to refer Poland to the European Court of Justice as the Polish electricity taxation system is not in line with EU law. In contrast to European law, where excise duty on electricity is chargeable at the time of supply by the distributor or redistributor, excise duty in Poland is charged to the producer at the time of supply. Therefore the distributor is not liable to tax. The Polish legislation does not meet the obligations under the Energy Tax Directive (2003/96/EC).

The Polish government received a reasoned opinion (which is step 2 in infringement proceedings) in March 2007 but as of now, has not amended the legislation. Thus the European Commission decided to refer the case to the Court of Justice (2006/2218).

**Read more (click to open):**

Press Release by the European Commission on  
taxation of electricity

languages: [EN](#) [FR](#) [DE](#)

## IMPRESSUM

Confédération Fiscale Européenne  
188A, Av. de Tervuren  
B-1150 Brussels

Editors: Una Maguire and Stella Willborn  
If you have any suggestions or questions, please  
feel free to contact the editor: [brusselsoffice@cfe-  
eutax.org](mailto:brusselsoffice@cfe-eutax.org)

Layout: Stella Willborn

Disclaimer: The Confédération Fiscale Européenne (CFE) distributes this report to enhance public access to information about European policies in general. The CFE accepts no responsibility or liability whatsoever with regard to the material. The links will connect you to sites which are in no way controlled by the CFE, and CFE is not responsible for their content, or indeed for any further links which they may support. All rights reserved.

+++The next issue of the European Tax Report will  
be published in September 2007 +++