



European Tax Report Confédération Fiscale Européenne (CFE)

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NEWS - INDIRECT TAX

European Council

Lowest VAT rates

EU Finance Ministers have failed to narrow their differences about the economic benefits of cutting VAT rates at the two-day informal Ecofin Council meeting on 12-13 September. France, and a number of other EU Member States, want an increase in the number of areas of the economy that benefit from the lowest VAT rate allowed in the EU, which is 5%. But they were opposed by Germany and a number of other countries that believe that cutting rates would distort competition between sectors and countries. Commissioner Kovács support the proposal of a lower rate for restaurants and he argues that such a move would not distort competition. However, the only real progress made during the Ecofin Council meeting involved the request made to the European Commission to produce a report on the economic and financial effects of changing VAT rates. The report will look at “the pros and cons of different proposals on the table” and the Ministers will negotiate the measures in question at the Ecofin Council in October.

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French Presidency

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European Parliament

EP supports taxing intra-Community supplies in attempt to step up fight against VAT fraud

On Tuesday 2 September, the European Parliament adopted the own-initiative report of British Liberal, Sharon Bowles, on a coordinated strategy for fighting tax evasion. This phenomenon is estimated to cost more than €200 billion a year, a quarter of which stems from value added tax (VAT) fraud. It is therefore approving the position of its economic and monetary affairs committee and calling for a 15% fixed tax rate

for intra-Community supplies. MEPs have slightly amended the competent committee’s draft report. They have watered down their demand for an amendment to Directive 2003/48/EC on savings revenue taxation and are now simply suggesting that the Commission “envisages” an extension of the field of application for legal entities and sources of financial income. Although considered as a temporary measure, the current system for collecting VAT in the country of destination for intra-Community supplies alone is not at much of a risk of being upset since the Member States are divided on this subject and do not appear prepared to have their tax revenues dependent on tax transfers between other member states.

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European Commission

The Commission may prosecute Greece for failing to notify the transposition of two VAT Directives into national law

The European Commission has decided to send Greece two reasoned opinions, the second stage in the infringement procedure provided for in Article 226 of the EC Treaty, for failing to notify two transposition measures. On the one hand under Council Directive 2006/69/EC of 24 July 2006 relating to certain measures to simplify the procedure for charging value added tax and to assist in countering tax evasion or avoidance, and repealing certain Decisions granting derogations, and on the other hand under Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

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European Commission

ECJ - Corporation tax in the Spanish Basque Country (Cases C-428/06 to C-434/06)

Corporation tax in the Spanish Basque Country, which is below that in force at national level, does not necessarily constitute state aid, the Court of Justice of the European Communities rules in judgments on Thursday 11 September (Cases C-428/06 to C-434/06). However, the judges say, it is the responsibility of the national court to determine whether the infra-state tax regime is discriminatory and whether Basque authorities benefit from compensation from the national treasury.

The case began when the Spanish autonomous communities neighboring on the Autonomous Community of the Basque Country complained that the latter was applying an unlawful tax regime with a view to attracting business. The Tribunal Superior de Justicia de la Comunidad Autónoma del País Vasco then called on the European Court of Justice to state whether these foral tax measures should be considered as state aid, in so far as companies established elsewhere in Spain cannot benefit from them.

In its ruling, the Court states it is necessary to determine to what extent these infra-state entities are truly autonomous. If they are really independent when it comes to their institutions, procedures and finance, then measures must not be considered as state aid favoring any specific region, but rather as a coherent tax regime applied throughout a given administrative territory. If the Territories prove to be truly independent from every point of view as analyzed by the Court, then the tax regime in question does not constitute state aid. Furthermore, the Court recognizes that it remains to be established whether Spanish law allows the autonomous communities to tax companies or businesses on their territory at a lower rate than that set by the national government. The Court states in its judgment, however, that this is not part of its attributions.

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Press Release ECJ C-434/06

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Report from the Commission to the Council on Council Directive 2003/48/EC on taxation of savings

The European Commission adopted its first implementation report on Directive 2003/48/EC concerning taxation of savings income on 15 September. The report presents an evaluation of the sums transferred between Member States and between EU countries and third countries which apply equivalent measures. The Commission's analysis shows that the Directive has proven effective within the limits set by its scope. However, the analysis suffers from many shortcomings linked to definitions in the legal provisions of the Directive, to severe data limitations and to technical issues, all of which make the analysis more difficult. The report also proposes possibilities for improving European legislation. These legislative concerns concern the concepts of "beneficial owner" and "paying agent", the treatment of financial instruments equivalent to those explicitly covered as well as procedural aspects. The issues linked to the legal provisions include the facts that the beneficial owner may use intermediate structures not covered by the Directive or that the country of the paying agent may be different from the country where the funds are located. On the basis of the report, the Commission will present a specific legislative proposal to the council in the next few weeks.

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Report on Directive 2003/48/EC

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CCCTB – Latest Update

Tom Neal, Head of CCCTB Task Force at DG Taxation and Customs Union at the European Commission, informed about the latest progress regarding the CCCTB at a Conference concerning Europeanization of Tax Law in Brussels the 11th September 2008. Mr Neal stated that some very detailed technical areas still need further work, in particular those related to the Financial Sector. Therefore Commissioner Kovács will not present his proposal in September, as expected. He prefers to present a perfectly elaborated and well justified product at the appropriate time rather than present an incomplete one just to meet an artificial deadline. No new date is announced. Mr Neal further affirmed that there is ongoing work to include continuing discussions and consultations with outside experts.

NEWS - DIRECT TAX

Corporate taxation: Infringement procedure against UK concerning the Marks & Spencer Case

The European Commission has sent the United Kingdom a formal request to properly implement the European Court of Justice (ECJ) judgment in Marks & Spencer (Case C-446/03) on cross border loss compensation. In the legislation meant to implement the Marks & Spencer ruling, the United Kingdom imposes conditions on cross border group relief which make it virtually impossible for tax payers to benefit from the relief. The Commission considers that this is contrary to the EC Treaty. The request is in the form of a 'reasoned opinion' under Article 226 of the EC Treaty. If the United Kingdom does not reply satisfactorily to the reasoned opinion within two months the Commission may refer the matter to the European Court of Justice.

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Infringement procedure against Ireland concerning savings certificates and State-issued/guaranteed securities

The European Commission has formally requested Ireland to amend the discriminatory treatment resulting from a tax exemption for interest on savings certificates issued by the Irish State and the possibility of a tax exemption of certain Government, State-issued and State-guaranteed securities, while interest on similar foreign certificates and securities is not tax exempt

These provisions discriminate against taxpayers who wish to invest in similar financial instruments issued in other Member States. The provisions are incompatible with the free movement of capital, as guaranteed by Article 56 of the EC Treaty and Article 40 of the EEA agreement.

The request takes the form of a Reasoned Opinion (second step of the infringement procedure provided for in article 226 of the EC Treaty). If there is no satisfactory reaction to the Reasoned Opinion within

two months, the Commission may decide to refer the matter to the European Court of Justice.

In the Commission's view the Irish provisions at issue dissuade taxpayers from investing in similar financial instruments issued in other Member States or EEA countries by denying tax exemption for such instruments. The European Court of Justice ruled in Case C-478/98, Commission v Belgium, judgment of 26 September 2000, that any measure taken by a Member States which is liable to dissuade its residents from making investments in other Member States constitutes a restriction on free movement of capital within the meaning of Article 56 of the EC Treaty.

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Infringement procedure against Portugal regarding discrimination against non-Portuguese service providers

The European Commission has decided to refer Portugal to the Court of Justice for its discriminatory tax rules according to which non-resident entities providing services in Portugal are subject to a withholding tax based on the gross amount of their income, whereas domestic providers are taxed only on their net profits. The Commission considers that these rules are incompatible with the EC Treaty, which guarantees the free provision of services. In the view of the Commission this legislation is likely to dissuade foreign services providers from providing services in Portugal, and might dissuade Portuguese clients from buying services from foreign providers, and therefore constitutes an infringement of Article 49 of the EC Treaty (freedom to provide services).

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NEWS - DIRECT TAX

Infringement procedure against Greece concerning acquisition of a first real estate

The European Commission has sent Greece a formal request to amend its rules which give permanent residents in Greece a tax exemption on the real estate transfer tax for their first residential property purchase, but do not grant the same exemption to first-time residential buyers who do not yet live permanently in Greece but intend to do so in the future.

Furthermore, Greece is requested to abolish its discriminatory rules that, under certain circumstances, allow a real estate transfer tax exemption to Greek nationals living abroad when they are acquiring their first residential real estate in Greece, but do not allow the same exemption to foreign nationals. This request is in the form of a reasoned opinion, the second stage of the infringement procedure under Article 226 of the Treaty. If Greece does not amend its law within two months, the Commission may refer the case to the Court of Justice. The Commission considers that the exemptions provided in the Greek legislation constitute a violation the discrimination ban, as well as of the free movement of persons and the freedom of establishment laid down both in the EC Treaty and in the EEA Agreement.

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Infringement procedure against Sweden concerning exit tax provisions for companies

The European Commission has formally requested Sweden to change its tax provisions which impose an exit tax on companies ceasing to be taxable in Sweden.

The provisions are incompatible with the freedom of establishment as guaranteed by Article 43 of the EC Treaty and Article 31 of the EEA Agreement. The request takes the form of a reasoned opinion (second step of the infringement procedure provided for in Article 226 of the EC Treaty). If there is no satisfactory

reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the Court of Justice of the European Communities.

Under Swedish Law an exit tax is levied on unrealised capital gains, and deductions made for the untaxed reserves if the company is no longer taxable in Sweden upon a change of the seat or place of effective management or in case a permanent establishment ceases its activities in Sweden or transfers its assets to another Member State. Such provisions are likely to dissuade companies from benefiting from the freedom of establishment and, as a result, these Swedish provisions constitute a restriction of Article 43 EC.

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Infringement procedure against Portugal concerning discriminatory taxation of lottery winnings

The European Commission has sent Portugal a formal request to amend its discriminatory rules that provide for the taxation of foreign lottery winnings whereas winnings from lotteries (Euromilhões e Liga dos Milhões) organised in Portugal by Santa Casa da Misericórdia de Lisboa are exempt from income tax. The Commission considers these rules to be contrary to the EC Treaty and the EEA Agreement, as they restrict the freedom to provide services. The Commission believes that the company's legal status amounts to a form of discrimination as other lotteries in the EU do not receive the same favourable treatment. In addition, Portugal levies taxes on winnings from foreign lotteries. The Commission said that the different treatment of income from the national lottery and from foreign lotteries amounts to discrimination. This request is in the form of a reasoned opinion, the second stage of the infringement procedure under Article 226 of the Treaty. If Portugal does not amend its law within two months, the Commission may refer the case to the Court of Justice.

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OTHER NEWS**European Commission****New General Block Exemption
into effect**

On 29 August 2008, the new General Block Exemption Regulation (GBER) on State Aid came into effect. Based on this regulation, Member States may be exempt from notifying new state aid regimes if all criteria and maximum aid levels are met. The GBER covers such areas as regional aid and aid to SMEs, covering investment and employment besides exempt aid levels for environmental protection and environmental investments. Other areas of aid covered are risk capital schemes, R&D, training aid and aid for disadvantaged and disabled workers. Although the GBER may apply to aid in the form of fiscal measures (in particular, environmental tax incentives), it is rather restrictive since the amount of tax benefits must be determined ex ante. For this reason, tax incentives should provide for a cap on maximum benefits i.e., ruling out most incentives other than tax credits as far as progressive taxes are concerned.

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**IMPRESSUM**

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