European Tax Report
Confédération Fiscale Européenne (CFE)

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NEWS - INDIRECT TAX

European Council

Increased fight against VAT fraud

On 9 June, the European Finance Ministers reached a political agreement on a legislative proposal modifying directive 2006/112/EC on European VAT. The proposal aims to improve the fight against VAT fraud by tightening up the conditions of VAT exemption on imported goods which are then re-exported to another Member State. As of January 2011, all importers must provide the Member State of importation with their VAT number and that of their client and also prove that the imported goods will be transferred elsewhere within the EU. The Finance Ministers call for an examination of the possibility that a system for the automatic exchange information could be set up between Member States and for a legislative proposal to be presented before the end of 2010, if required. The Council stresses the importance of continuing discussions on the other part of the proposal on the table regarding cross-border responsibility and solidarity. The Commission has proposed that a provider carrying out intra-Community operations is held responsible for any loss of VAT revenue caused by any client of theirs defaulting in another Member State, if this provider contributed to that loss by failing to declare their delivery to the competent administration, by declaring incomplete or incorrect data or by sending in their declaration after the due deadline.

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Technical amendments to the VAT Directive

The EU Finance Ministers also agreed on technical amendments to the VAT Directive. The Commission's proposal aims to modernising and simplifying the current complex VAT legislation for financial services and insurances. These services are generally exempt from VAT but the exemption dates from 1977 and the legislation has not kept abreast of developments since then. As a result, the exemption is not applied uniformly by the Member States and thus frequently the ECJ has been asked to clarify the correct interpretation and fill the legislative gap. The Commission proposal seeks to address the VAT problems of the financial sector by allowing financial institutions to opt for taxation and by introducing of a sector-specific cost-sharing exemption scheme.

EU research infrastructure offered VAT exemption

On 29 May the EU Research Ministers accepted a Czech EU Presidency proposal that European Research Infrastructure (ERI) projects will be treated as international organisations for taxation purposes. The new pan-European research infrastructure such as CERN, the world's largest nuclear research organisation, is to be granted international organisation status and exempted from excise duty and VAT. The Research Ministers' political agreement paves the way for an EU legal framework to facilitate the joint establishment and operation of research facilities of European interest, associated countries and intergovernmental organisations.

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Council Conclusions

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European Commission

New option to the VIES data base

The European Commission has added a new option to the VIES data base (VAT electronic information exchange system). This option will enable someone paying VAT and who is carrying out an intra-Community delivery to obtain a certificate demonstrated that he has checked the VAT number of the client. The European Commission hopes that this new on line service will increase the legal certainty for traders involuntarily involved in fraud (in particular carousel fraud). The new service is an improvement of the already existing VAT database VIES on the Internet.

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VIES VAT number validation

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Infringement procedure UK: VAT exemption for aircrafts

The UK has received a reasoned opinion (second step of the infringement procedure provided for in Article 226 of the EC Treaty) from the Commission calling on it to amend it legislation that uses criteria different to those of Directive 2006/112/EC to exempt from VAT the provisions of products and services for the fuelling and provisioning of aircraft. Article 148 of the VAT Directive exempts from VAT certain supplies of goods and services related to aircraft. The essential condition for those exemptions to apply is that the aircraft must be "used by an airline operating for reward chiefly on international routes". However, the UK applies the exemptions according to different criteria, those of the weight of the aircraft and of its design. The European Commission bases its action on European jurisprudence (Case C-380/02).

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Infringement procedure Portugal: flat-rate scheme applied to farmers

With a reasoned opinion, the Commission calls on Portugal to amend its tax law that is said to be to the disadvantage of agricultural producers that have chosen a flat rate scheme.

Instead of introducing a flat rate scheme for farmers in line with the provisions of the VAT Directive, Portugal has introduced an optional exemption for agricultural activities, exempting VAT on supplies provided by the farmer, unless he opts to apply the normal VAT arrangements. In addition, the flat-rate compensation percentage is fixed at a zero rate: farmers are not compensated for the VAT paid on their inputs while they have to pay VAT on agricultural inputs of 5-12%. Given that too much VAT is levied from the sector, Portugal makes a substantial negative compensation in its own resources to compensate for this factor. As a result farmers opting for the flat rate scheme may face financial disadvantages. The Commission is of the opinion that the flat rate scheme applied to farmers in Portugal clearly conflicts with the purpose of the scheme and that the Portuguese rules do not comply with the VAT Directive 2006/112/EC.

If the relevant national legislation is not amended in order to comply with the respective reasoned opinion, the Commission may decide to refer the matter to the ECJ.

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European Council

EU Council adopted conclusions on good governance in the tax area

On the ECOFIN meeting on 9 June the EU Finance Ministers adopted conclusions on good tax governance. They highlighted the need to enhance administrative cooperation and mutual assistance in the tax area and to apply the OECD standard as regards exchange of information on request (Article 26 §. 4, 5 OECD Model Convention), i.e. that provision of information can't be refused on the sole ground that the information is held by certain financial institutions, or on that the requested state has no domestic interest in such information. The measures are aimed at facilitating transparency and the exchange of information as well as promoting fair tax competition within the EU and in EU relations with third countries. The Council welcomed the ongoing work on legislative proposals concerning the savings taxation directive, the administrative cooperation directive and the recovery directive.

The Council also calls on the Commission to open consultations with Switzerland, Liechtenstein, Andorra, Monaco and San Marino on revising their respective agreements on savings taxation.

Regards the ongoing review of the savings taxation directive, the Council welcomed the progress made and agreed that the functioning of savings taxation should be improved in the framework of an overall agreement in particular by:

- an extension of the scope of the Directive to at least other substantially equivalent income than just interest from savings,
- the introduction of a look through approach for payments to certain non-EU entities and arrangements and a more systematic application of paying agent upon receipt responsibilities, and
- a broader use of personal identification numbers and the use of the information on actual tax residence, when available, in identification procedures.

The Swedish presidency will report back on progress in the area in the autumn of 2009.

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French white paper on carbon tax

The French government has taken the first step to introduce a carbon tax in 2011, anticipating support for Sweden's plans to make implementing such a scheme at EU level one of the priority of its upcoming six-month presidency. Europe's emissions trading scheme, already sets a price on carbon for industrial emissions but Sweden argues that this still leaves 60% of emissions untouched, and is advocating a tax as the best way to bring them down (see European Tax report 5/2009) and the French government is arguing along similar lines.

The French Environment and Finance Ministers Jean-Louis Borloo and Christine Lagarde opened the debate on the tax by presenting a white paper for public consultation on 10 June. However, the government did not give details of what products the future tax should cover, nor did it specify how it should be implemented. The purpose of the tax is to push both businesses and consumers towards greener energy consumption to help France meet its targets for cutting greenhouse gas emissions. The government insists that the tax would not add to the financial burden on industry and households, because it would be accompanied by other tax reductions.

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Communiqué de presse

FR

Lisbon Treaty: Protocol guarantees Irish tax competence

On 19 June, the European Council formally approved the "legal guarantees" which Ireland had called for in order to be able to convene a further referendum on the Treaty of Lisbon. The guarantees, which are designed to reassure the Irish over the issues of neutrality, taxation and abortion, will initially take the form of a binding "decision" of the heads of state and government, which will enter into force (without further ratification) at the same time as the Lisbon Treaty. The second section on tax states that "nothing in the Treaty of Lisbon makes any change of any kind for any Member State to the extent or operation of the competence of the Europe Union in relation to taxation". The protocol will clarify but not change either the content or the application of the Treaty of Lisbon", the European Council stressed in its conclusions.

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Presidency Conclusions

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European Commission

State aid: Conditions for Danish reduced tax on CO2 emissions

The European Commission has cleared, under EC Treaty state aid rules, a Danish project to grant CO 2 tax relief to companies covered by the EU's Emissions Trading Scheme (EU ETS), subject to conditions. After an in-depth investigation, the Commission concluded that if the proposed full tax exemption would be implemented, some of the environmental objectives which a tax on energy products aims to achieve would be lost. The Commission also had concerns that a full tax exemption would distort competition by increasing tax differentiations in an area where the EU has harmonised taxes and set tax minima to create a level playing field between companies. The Commission therefore approved the measure under the condition that it is amended so that all concerned companies pay an energy tax respecting at least the harmonised minima tax levels.

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State aid: Amendment to Danish tonnage tax scheme refused

The European Commission refused a change Denmark intended to make to its flat-rate tonnage-based tax scheme (tonnage tax) for shipping companies. The Danish authorities had proposed to exempt maritime companies which benefit from a tonnage tax regime from their obligation to systematically send fiscal authorities financial information relating to their transactions with any of their foreign affiliates.

On the basis of its investigation, the Commission took the view that the proposed change could deteriorate significantly one of the ring-fencing measures linked to the scheme, namely the monitoring of commercial transactions between companies subject to this scheme and their possible affiliates in other Member States or countries in the European Economic Area. The Commission also noted that Denmark failed to justify the difference of treatment between transactions with a Danish-taxed affiliate and those with a foreign-based affiliate. The Commission has therefore decided to consider the measure notified by Denmark as incompatible with the common market.

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State aid: Irish health insurance tax and levy scheme authorised

The European Commission has authorised, under EC Treaty state aid rules, an Irish scheme of levies and tax relief in the health insurance sector. The objective of the scheme is to promote intergenerational solidarity by decreasing the risk differentials for health insurers between old and young customers. The Commission concluded that the measure was in line with the EU Framework for state aid in the form of public service compensation and as such compatible with Article 86(2) of the EC Treaty. In particular, after the Irish Authorities agreed to amend the scheme, the Commission was satisfied that none of the insurers would be overcompensated for the discharge of the public service.

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Infringement procedure Spain: Tax provisions related to the exchange of shares

The European Commission has formally requested Spain to change its tax provisions concerning the taxation of capital gains arising from an exchange of shares. Spain taxes benefits made from an exchange of shares at the time they are made, when

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the company having invested in the capital of another company is established on its territory. When acquisition is carried out by a company located outside Spain, taxation comes earlier, from the share swap operation.

According to the Commission, this difference in treatment is incompatible with Council Directive 90/434/EEC (the Merger Directive) on merger taxation, company division, transfers of assets and exchange of shares concerning companies of different Member States. Moreover, they would also constitute an obstacle to the free movement of capital, as shareholders are treated less favourably if the company in which they receive shares is located in a Member State other than Spain. The request takes the form of a reasoned opinion.

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Infringement procedure Finland and Denmark: Discriminatory taxation of foreign pension funds

The European Commission has sent Finland and Denmark formal requests to amend their legislation which leads to discriminatory taxation of foreign pension funds.

Finland received a reasoned opinion calling for it to amend its tax law because it taxes its national pension funds less than those established elsewhere in the EU. The Danish legislation provides for a similar difference in treatment between foreign and domestic pension funds Denmark taxes dividends from foreign pension funds at 15% of their gross amount, while dividends generated by Danish pension funds are taxed only on the basis of their net amount. The difference in treatment between foreign and domestic pension funds amounts to an obstacle to the free movement of capital within the meaning of Article 56 EC. The effect of the legislation is to make cross-border transfer of capital less attractive by de facto taxing dividends transferred to foreign pension funds at a higher rate.

In the Commission's view the difference in treatment constitutes an arbitrary discrimination which cannot be justified on the grounds provided under Article 58 EC (which allows discriminative measures justified on grounds of public policy or public security). If Finland and Denmark do not reply satisfactorily to these reasoned opinions within two months the Commission may refer the matter to the ECJ

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Infringement procedure Belgium: Discriminatory taxation of interest

The European Commission has sent Belgium a formal request to amend its legislation which leads to different taxation of interest depending on where the bank paying such interest is established. The Commission considers the Belgian legislation which exempts from taxation interests paid by Belgian banks to individuals up to €1,660, while interests paid by foreign banks do not enjoy the same exemption as discriminatory. The difference in treatment between interest paid by Belgian banks and interest paid by foreign banks amounts to an obstacle to the free movement of capital within the meaning of Article 56 EC, and to the freedom to provide services within the meaning of Article Articles 49 EC. The Commission's request takes the form of a 'reasoned opinion' calling for its national legislation to be amended.

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Infringement procedure Luxembourg: Incorrect application of the Savings Tax Directive

The European Commission has decided to refer Luxembourg to the ECJ over its incorrect application of certain provisions of the Savings Tax Directive as regards interest payments made to beneficial owners who benefit from so-called "non-domiciled resident" status in their country of residence.

Luxembourg refuses to apply the Directive to beneficial owners who benefit from the so-called "non-domiciled resident" status in their country of residence. Consequently, Luxembourg paying agents do not

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levy withholding tax on interest payments to such beneficial owners.

According to the Commission, Luxembourg cannot provide for an exemption from withholding tax in situations other than those expressly provided by article 13 of the Directive. The Commission is of the opinion that the paying agent has the obligation to establish the residence of the beneficial owner on the basis of minimum standards, as provided by article 3(3) of the Directive. If the beneficial owner is a resident of another Member State in accordance with these standards, the Member State of the paying agent must ensure that the latter applies the Directive and, in the case of Luxembourg, that the paying agent levies a withholding tax on interest payments to such a beneficial owner. Consequently, the Commission considers that Luxembourg's legislation, in its current state, is not compatible with articles 2, 3, 10 and 11 of the Directive.

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Infringement procedure Romania: Application of pollution tax on cars

The Commission has requested information from Romania as regards its legislation on the application of a pollution tax on passenger cars. The Commission is of the opinion that the provisions of the Romanian legislation, according to which the application of the pollution tax for certain motor vehicles is suspended while it is increased for certain used cars coming from other Member States, might discriminate against used cars brought from other Member States and protect the domestic new car industry. The request takes a form of "a letter of formal notice" - the first stage of the infringement procedure laid down in Article 226 of the EC Treaty. If the Commission does not receive a satisfactory response within two months, it may proceed with the second stage of the procedure.

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European Court of Justice

Extended recovery period accorded

The ECJ judges that an extended recovery period where taxable assets concealed from tax authorities are held in another Member State is in accordance with EU law. The ECJ stresses that in so far as the tax authorities have no evidence of the existence of such assets, an extended recovery period does not go beyond what is necessary to guarantee the effectiveness of fiscal supervision and to prevent tax evasion.

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OECD

Luxembourg strengthens tax information exchange provisions

On 4 June Luxembourg signed a protocol to its double taxation convention with Denmark. The protocol, which allows exchange of bank information for tax purposes, brings the convention up to the OECD standard. Luxembourg signed similar protocols with France, on 3 June, and the Netherlands, on 29 May. In addition to these countries, Luxembourg's tax agreements with Bahrain, India and the United States also meet the OECD standard on exchange of information.

The OECD states that Luxembourg, after having withdrawn its reservation to the OECD standard on exchange of information in March 2009, has made significant progress in updating its treaty network in a very short time. Negotiations are also under way with other countries to update the exchange of information provisions in Luxembourg's bilateral treaties with them.

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European Commission

Taxation trends in the EU

The 2009 edition report of the European Commissioncontains a detailed statistical and economic analysis of the tax systems of the EU Member States of and Norway.

The country chapters give an overview of the tax system in each of the 28 countries covered, the revenue trends and the main recent policy changes. Detailed tables allow comparison between the individual countries and European averages. Data cover the 1995-2007 period and are presented both as a percentage of GDP and as a percentage of total taxation. This year's edition of Taxation trends in the European Union appears at a time of upheaval. The report takes stock of the tax policy measures taken by EU governments in response to the global economic and financial crisis up to spring 2009. These measures are synthesised in a box and described in detail in the country chapters of the report. Moreover, this year's edition contains a new set of environmental data (tax revenues raised on the transport use of fuel), as well as increased coverage of the data on the top rate of the personal income tax and corporate income tax.

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Taxes in Europe Database

An updated version of the Taxes in Europe data base (TEDB) is now available on the European Commission's website. The updated version contains information on some 650 taxes, instead of 600 previously.

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Taxes in Europe Database

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OECD

Conference on the Fight against International Tax Fraud and Evasion

On 23 June a high-level ministerial meeting on transparency and exchange of information for tax purposes was organised by the French and German governments in Berlin on the fight against tax fraud and evasion. The meeting was attended by high-level officials from Austria, Belgium, Denmark, Finland, France, Germany, Great Britain, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Norway, Spain, Sweden, and Switzerland.

During the meeting 19 OECD Member Countries adopted a declaration listing position retaliation measures against jurisdictions not applying the organisation's standards on tax information exchange. The countries could take measures if they consider they have been harmed: application of higher withholding taxes to a wide variety of payments in non-cooperative jurisdictions; the refusal to recognise tax deductions on payments to people or companies based in the jurisdictions concerned and the denunciation of treaties linking the countries harmed to the jurisdictions refusing to take part in tax information exchange.

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Summary of Conclusions

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Survey: Recovering VAT incurred abroad

The OECD has launched a new survey into the VAT "lost" by businesses due to the difficulties of recovering tax incurred in countries other than their own.

This survey is aimed at businesses so that they mayhelp provide the OECD with a better understanding of why these refunds can be difficult and what remedies might exist.

The survey consists of an electronic questionnaire and the deadline is set to **17 July 2009.** The results will be made available later this year.

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]

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IMPRESSUM

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