European Tax Report
Confédération Fiscale Européenne (CFE)

August - October 2010 / Edition 8

SAVE THE DATE

CFE Professional Affairs Conference: "A developing relationship: tax authority – taxpayer – tax adviser"

The CFE has pleasure in inviting you to join the European Conference on Tax Adviser's Professional Affairs which will take place on **1 December 2010** in **Düsseldorf/Germany**.

The conference will address the recent efforts of tax administrations to increase compliance of taxpayers through various initiatives that do or do not include tax advisers. Tax authorities in different countries have chosen different approaches such as increasing transparency through additional disclosure obligations, enhanced mutual trust, compliance monitoring by tax advisers or risk management by tax authorities. It seems worth asking whether these new forms of cooperation will create to win-win-situations for all parties involved or to what extent they will have the effect of preventing taxpayers from making use of their rights.

The half-day conference seeks to provide views from France, Germany, the United Kingdom and the Netherlands, including both tax administrations and businesses.

READ MORE *(click to open):*

More information on our website: **EN**

NEWS - DIRECT TAX

Commission requests Germany, Greece and Belgium to remove discriminations of foreign fiscal unities, outbound dividends and donations and legacies to certain institutions

On 30 September 2010, the European Commission sent reasoned opinions to Germany, Greece and Belgium to change tax rules the Commission considers discriminatory. Reasoned opinions are the second stage in infringement proceedings and the last stage before referring member states to the ECJ.

Germany: restriction of fiscal unity (Organschaft) regime to domestic companies

Under German law, a company set up in accordance with the company law of another member state which has its registered office outside Germany and place of effective management in Germany cannot benefit form the fiscal unity regime (Organschaft) which is available to German companies, although this company is fully taxable in Germany. Therefore the company cannot enjoy the tax benefits resulting from the allocation of the group company's income to the parent company (offsetting of profits and losses within the fiscal unity). Such provisions are considered to be discriminatory in comparison to domestic competitors and may restrict the freedom of establishment of businesses in Germany. The Commission underlines that this case does not deal with cross-border loss compensation.

Greece: withholding taxes on dividends paid to Swiss parent company

Greece applies a withholding tax of 10% on dividends paid by Greek subsidiaries to Swiss parent. The Commission considers that Greece does not respect its obligations under an agreement between the European Community and Switzerland providing for measures equivalent to those in the Savings Tax Directive 2003/48/EC according to which dividends paid by a subsidiary to a parent company shall not be subject to taxation in the source state.

Belgium: beneficial tax regime on gifts and legacies to certain public bodies in Brussels and tax rules for capital gains on the redemption of shares of collective investment vehicles

The Brussels region codes on registration duties and on succession duties establish a beneficial tax regime on gifts and legacies granted to certain public bodies established in the Brussels region. The Commission considers that such regime would also have to apply to equivalent organisations in other EEA countries. The existing regime would constitute a restriction of free movement of capital (Art. 63 TFEU and Art. 40 EEA Agreement).

Furthermore, Belgium favours capital gains on the redemption of shares of collective investment vehicles established in the EU compared to such gains from collective investment vehicles established in other EEA countries (Norway, Iceland, Liechtenstein) as those gains are taxable in Belgium. The Commis-

sion considers that this difference of treatment limits the free movement of capital and the freedom to provide services (Art. 36 and 40 EEA Agreement).

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

Press release: **EN FR DE NL EL**

Commission requests the Netherlands to change four discriminatory tax laws

The European Commission decided on 30 September 2010 to send four separate requests to the Netherlands to change discriminatory tax regimes. Those concern succession and gift duties on country estates, taxation of real estate income for non-resident charities, taxation of interests held by non-resident charities and substantial interests held by foreign companies. In all cases, the Commission considers the tax rules in question to breach EU rules on the free movement of capital (Art. 63 TFEU). The requests are in the form of reasoned opinions, the second step in EU infringement procedures and the last step before taking a member state to Court.

Succession and gift duties on country estates

In the Netherlands, country estates located in the Netherlands are fully or partially exempted from succession or gift duties, a beneficial treatment that country estates in other EU or EEA countries do not enjoy. The Commission considers such provisions to be discriminatory and contrary to EU rules on the free movement of capital.

Discrimination of non-resident charities

The Commission has formally requested the Netherlands to change its tax rules which discriminate against foreign charities that have real estate in the Netherlands. Under the Dutch rules in question, domestic charities and church organisations which are not involved in any enterprise are exempt from taxation on income from real estate in the Netherlands. However, non-resident foreign charities and church organisations are subject to tax on any income from property they may have in the Netherlands.

Another discrimination of non-resident charities is seen in the rule that Dutch resident charities which do not run an enterprise are exempt from corporation tax, whereas similar non-resident charities are not. Dutch companies which are not engaged in an enterprise but which receive income from substantial interests in Dutch companies or from debt claims on companies in which they hold shares, are exempt from corporation tax. However, foreign charities have to pay tax on such income received from Dutch companies. The Commission considers these rules contrary to EU law on the free movement of capital.

Substantial interests held by foreign companies

The Commission has also requested the Netherlands to change legislation that exempts domestic companies from tax on their income from substantial interests but which taxes companies established elsewhere in the EU and EEA on income from substantial interests not forming part of the business capital. The Commission considers this rule contrary to the TFEU provisions on the free movement of capital, the freedom of establishment and to the Parent-Subsidiary Directive 2003/123/EC.

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

Press release: **EN FR DE NL**

Commission requests UK to ensure reimbursement of taxes paid in violation of EU law

On 30 September 2010, the European Commission formally requested the UK to change its Finance Act 2007 to ensure that the abolition of the „remedy for repayment of taxes paid in mistake of law“ is subject to proper transitional rules. Under EU law, the reimbursement of taxes paid in violation of EU rules should be granted according to the national rules on internal tax reimbursements and should not be made impossible or excessively difficult. A retroactive limitation of the rights of taxpayer in this respect would contravene this principle. The request of the Commission takes the form of a reasoned opinion, the second step of an EU infringement procedure and the final state before an infringement action before the ECJ.

The UK‘s Finance Act 2007 retroactively abolishes one of the remedies used by taxpayers seeking reimbursement of taxes paid in breach of EU law, thereby preventing the exercise of rights conferred by EU law in certain cases. This measure, according to the Commission, exceeds the limits of national procedural autonomy stemming from Article 4(3) EU Treaty. Since the limitation period introduced does not provide for any proper transitional rules (except in certain circumstances), the Commission criticises that it is almost impossible to exercise the rights conferred by EU law.

NEWS - DIRECT TAX

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Press release: **EN** **FR** **DE**

EU Commission consultation on taxation of cross border interest and royalty payments between associated companies

The Commission has invited interested parties to common on a recast of the Interest & Royalties Directive 2003/49/EC concerning the taxation of I&R payments between associated companies in different member states. In these cases, the state from which a payment is made (source state) charges a tax on the recipient company. Additionally, the recipient company is subject to tax on the income derived from this same payment in the member state of its tax residence, leading to double taxation. The Directive provides for tax exemption in the source state. The exemption also applies when the payment is made from a permanent establishment (i.e. a branch) of the company place in a third member state or received by such business centre.

The objective of the consultation is to clarify existing legislation while extending its benefits to a wider range of companies by including other legal forms in the Directive, reducing the threshold to be considered associated company, taking account of indirect shareholdings to compute the total holding or, alternatively, extending the exemption to payments between unrelated parties. The consultation was already opened on 26 July but only publicly announced on 24 August 2010. It will be open until 31 October 2010.

READ MORE *(click to open):*

Consultation: **EN** **FR** **DE**

Consultation paper: **EN** **FR** **DE**

OECD publishes comments on future project on the transfer pricing aspects of intangibles

On 2 July 2010, the OECD invited stakeholders to comment on the scoping of a project on the transfer pricing aspects of intangibles due to start in 2011 (see **CFE European Tax Report 6/2010**, page 5). On 23 September, the OECD published the comments received on its website. These will be discussed by the OECD Working Party No.6 at its November 2010 meeting.

READ MORE *(click to open):*

OECD website: comments received: **EN**

OECD publishes comments on draft implementation package: Possible improvements to procedures for tax relief for cross-border investors

On 8 February 2010, the OECD released for public comments a draft implementation package for a streamlined procedure for portfolio investors to claim reductions in withholding rates pursuant to tax treaties or domestic law in the source country. The comments received on this draft implementation package were published on the OECD website on 16 September 2010.

READ MORE *(click to open):*

OECD news release with links to comments:
EN **FR**

NEWS - INDIRECT TAX

Regulation against VAT fraud and on creating Eurofisc adopted

On 7 October 2010, the Ecofin Council adopted the Regulation 904/2010. The Regulation will establish Eurofisc, a network of national officials to detect and combat cross-border VAT fraud at an early stage. Furthermore, it will specify situations in which member states must exchange information spontaneously, the procedures on providing feedback thereto and situations in which multilateral controls must be conducted (see also **CFE European Tax Report 6/2010**, p.1).

NEWS - INDIRECT TAX

READ MORE *(click to open):*

Council press release: **EN** **FR**

Official journal: **EN** **FR** **DE**

Additional Council documents: **EN** / **EN** / **EN**

Deadline for VAT refund procedures extended to 31 March 2011

On 14 October 2010, the Ecofin Council extended the deadline for applications for refund of VAT expenses incurred in 2009 in another member state than the trader´s member state of establishment from 30 September 2010 until 31 March 2011. The exceptional measure was decided due to delays in the implementation of the new web-based refund procedure (**CFE European Tax Report 7/2010**, p.1).

READ MORE *(click to open):*

Press release (see p 14): **EN**

Directive: **EN** **FR** **DE**

Commission requests Latvia to amend discriminatory bio-fuel excise duty rates

On 30 September 2010, the European Commission has requested Latvia to amend its legislation so as to no longer discriminate against bio-fuel from other EU member states. Latvian law grants a lower rate of excise duty only for bio-fuel blended on Latvian territory. Latvia asserts that this was necessary to ensure bio-fuel quality and to protect consumers.

READ MORE *(click to open):*

Press release: **EN** **FR** **DE** **LV**

Council allows reverse charge mechanism in further cases

On 19 October 2010, the Ecofin Council allowed Austria, Germany, Italy and the UK to (continue to) apply temporarily a reversal of VAT liability for domestic supplies of mobile phones and integrated circuit devices and their components. For such supplies, liability can be shifted from the supplier to the customer until the end of 2013. The measure will help these countries to fight VAT fraud.

READ MORE *(click to open):*

Press release: **EN**

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD Global Forum issues phase I peer reviews for 8 countries

On 30 September 2010, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes issued phase one peer reviews covering the legal and regulatory frameworks for transparency and exchange of tax information in Bermuda, Botswana, Cayman Islands, India, Jamaica, Monaco, Panama and Qatar.

The reports describe each jurisdiction's rules for ensuring that information is available, how it can be accessed by competent authorities and the mechanisms in place to exchange the information with foreign tax authorities. The reports include recommendations on how these jurisdictions can improve their co-operation in international tax matters. The deficiencies identified commonly related to access to information including information on nominees, trusts and the need to maintain good accounting records. A second stage of the reviews, examining the eight countries' exchange of information practices, will take place by 2012.

The OECD Global Forum now comprises more than 100 jurisdictions and observers. All these jurisdictions, as well as others identified by the Global Forum as relevant to its work, are participating in reviews of their systems for the international exchange of information in tax matters.

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

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News release: **EN** **FR**

Statement of outcomes: **EN**

Download country peer reviews: **EN**

OECD Forum on Tax Administration discusses actions to address international compliance and taxpayer service

On 15-16 September 2010, the OECD Forum on Tax Administration met to discuss a range of issues associated with administering tax systems in the current climate. According to the tax commissioners, major improvements in taxpayer compliance could be obtained through:

- Joint audits by two or more revenue bodies examining corporate and individual taxpayers with a global footprint, to boost international tax compliance and reduce costs for taxpayers and revenue bodies;

- Sound corporate governance practices that address tax risk assessment and management by corporate boards;

- Building on recent advances in international co-operation and strengthening opportunities to share information which will improve offshore compliance.

The commissioners reaffirmed their commitment to improving service to taxpayers, in particular, to balancing the need for speed and integrity in making tax repayments or credits and the desire to continue constructive dialogues with key stakeholders. They also reconfirmed their commitment to support tax administrations in developing and emerging economies, in particular in relation to compliance. Participants also discussed reports on approaches to tax risks in the banking sector.

READ MORE *(click to open):*

News release: **EN** **FR**

Council continues to seek agreement on administrative cooperation directive

On 19 October 2010, the Ecofin Council discussed the directive proposal COM(2009)29 on administrative cooperation in direct tax which will deal in particular with exchange of information on request and automatic exchange. A political agreement will be sought (again) on the 17 November Council meeting.

READ MORE *(click to open):*

Council press release (p 7): **EN**

Directive Proposal: **EN** **FR** **DE**

OTHER TAX POLICY

Commission reflects on EU taxes to avoid future budget struggle

On 19 October 2010, the Commission listed a number of future financing options for the EU which today is largely financed through member states´ direct contributions. The aim is to make the EU more independent from its member states. The possibilities mentioned include an EU VAT, a tax on air transport or a share of new financial, corporate or energy taxes. The list is considered non-exhaustive.

In 2011, budget negotiations for the 2014-2020 period will commence. Those are expected to be particularly tough due to high budget deficits in the member states. About two thirds of the EU budget are direct contributions calculated on the basis of gross national income. An EU tax could help overcome the recurrent issue of the various rebates granted to member states of which the UK rebate is the most famous.

The suggestion of an EU VAT is based on the idea to replace the existing VAT-based resources by a 1% EU VAT that would go directly to the EU budget and not through the member states´ budgets. The Commission argues that this would simplify procedures and increase transparency. According to a 2004 study, this would bring in € 41 billion while the existing VAT-based resources bring in € 14 billion. The Commission would before mid-2011 present formal proposals for changes to the EU budget after 2014.

OTHER TAX POLICY

READ MORE *(click to open):*

Press release: **EN** **FR** **DE**

Commission communication « EU Budget review »: **EN** **FR** **DE**

Ecofin Council rejects EU bank rescue plan

The European Commission proposal for a bank rescue plan found little support in the Ecofin Council on 7 September 2010. Most of the countries that are willing to introduce a bank levy prefer to use the fiscal proceeds for their budget rather then feeding them to a special fund to wind down insolvent banks (see **CFE European Tax Report 5/2010**, p.4). So far, Austria, France, Germany, Hungary, Spain and the UK have been reported to plan a bank levy while Sweden has already introduced one (**CFE European Tax Report 1/2010**, p.8). It appears that only Germany supported the Commission proposal.

READ MORE *(click to open):*

Commission communication from 26 May 2010: **EN** **FR** **DE**

Commissioner Šemeta launches Tax Policy Group of ministries of finance representatives

On 12 October 2010, the first meeting of the new Tax Policy Group took place, in which personal representatives of EU Finance Ministers met to discuss key tax policy issues. The Group that had been set up for the first time in 1996 will discuss how taxation can contribute to a stronger internal market, to the growth and competitiveness of Europe‘s economy and to a „greener" economy. It will serve as a regular fixed forum for deeper discussion on priority matters, such as financial sector taxation, common consolidated corporate tax base and the new VAT strategy.

Commissioner Šemeta sees the establishment of the Tax Policy Group as one of his top priorities. The Group will help the Commission and member states to exchange views on proposals before they are put on the table, and to push forward discussions on important taxation dossiers.

The 12 October meeting has been dedicated to the recommendations of Mario Monti‘s report on the relaunch of the Internal Market (the **CFE European Tax Report 5/2010**, p.5), including how to address obstacles and bottlenecks in areas such as corporate taxation, consumption taxes and environmental taxation. It will also look at how tax policy coordination could better contribute to fiscal consolidation and improve the effectiveness of national strategies.

At the request of the Ecofin Council at the end of September, the Tax Policy Group also put the issue of financial sector taxation on its agenda.

READ MORE *(click to open):*

Press release: **EN** **FR** **DE** **ES** **NL** **IT** **PT** **FI** **EL** **CS** **LV** **MT** **PL** **SK** **SL** **BG** **RO**

Commission publishes paper on monitoring tax revenues and tax reforms in post-crisis EU

On 8 October 2010, the European Commission published its Taxation Paper 24 “Monitoring tax revenues and tax reforms in EU Member States 2010”.

READ MORE *(click to open):*

Taxation Paper 24: **EN**

Commission hesitant on financial sector taxes

After having taken the position that a financial transaction tax (FTT) would only be feasible at global but not at European level, the Commission, on 7 October 2010, explained their ideas for the future taxation of the financial sector:

At global level, the Commission supports the idea of a Financial Transactions Tax (FTT), which could help fund international challenges such as development or climate change, meaning at the same time that the Commission dropped the idea of an EU-wide FTT. At EU level, the Commission recommends that a Financial Activities Tax (FAT) would be the preferable option, taxing the corporations rather than each actor involved in a financial transaction (as is the case with

OTHER TAX POLICY

the FTT). Given that the financial sector is exempt from value added tax (VAT) in the EU, the Commission wants to make sure that this sector is not undertaxed compared to others. If carefully designed and implemented, the Commission considers that an EU FAT could generate significant revenues and help to ensure greater stability of financial markets by avoiding putting EU competitiveness at stake. The Commission would present these ideas to the European Council at the end of October and to the G20 summit in Seoul on 11-12 November.

Contrary to this, the press circulated on 19 October 2010 an internal Commission document, according to which financial sector taxes were no longer mentioned as EU priority for Seoul.

Also the Ecofin Council on 19 October 2010 did not agree on a clear statement in favour of financial sector taxes.

READ MORE *(click to open)*:

Press release: **EN** **FR** **DE** **ES** **NL** **IT** **PT** **FI** **EL** **CS** **LV** **MT** **PL** **SK** **SL** **BG** **RO**

Commission Communication: **EN**

Related staff document: **EN**

Questions and answers: Financial sector taxation: **EN**

Council press release (p.16): **EN**

STATE AID

Commission opens investigations of preferential real estate tax regime for non-commercial entities in Italy

On 12 October 2010, the European Commission opened an in-depth investigation to establish whether the municipal tax exemption granted by Italy to real estate used by non-commercial entities for specific purposes constitutes illegal state aid. The investigation has been initiated following a number of complaints alleging that Italy had granted illegal state subsidies to non-commercial entities that also perform commercial activities some which may be in competition with commercial service providers.

The complainants have also alleged that a 50% corporate tax reduction granted to certain entities was in breach of EU state aid rules. According to Italian law, the preferential tax treatment is granted to a number of entities that serve the public good. Special tax treatment for such entities existed before the entry into force of the EU Treaty. Aid existing prior to the creation of the EU or accession of the country concerned must be changed but cannot give rise to recovery if ruled illegal. The non-confidential version of the decision will be made available in the State Aid Register on the DG Competition website at a later stage.

The opening of an in-depth investigation allows interested parties to comment on the measures under assessment.

READ MORE *(click to open)*:

Press release: **EN** **FR** **DE** **IT**

Information on the Case in the State Aid Register: **EN**

PROCEDURAL LAW

EU justice ministers vote for granting translation and interpretation in criminal proceedings

EU justice ministers approved a law that ensures translation and interpretation rights in criminal proceedings. The Commission and the EP had already expressed their support earlier this year (**CFE European Tax Report 6/2010**, p.7). The law guarantees the right of suspects to obtain interpretation throughout criminal proceedings, including when receiving legal advice, in their own language in all courts in the EU. Translation and interpretation costs will have to be carried by the Member State, not by the suspect. The law is the first of a series of fair trial measures to set common EU standards in criminal cases. EU Member States now have three years to transpose the measure into their national laws.

The second measure, a **letter of rights** informing subjects of their rights on arrest, was proposed by the Commission on 22 July 2010.

PROCEDURAL LAW

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

Press release, 8 October 2010: **EN** **FR** **DE** **ES** **NL** **IT** **PT** **FI** **EL** **CS** **LV** **MT** **PL** **SK** **SL** **BG** **RO**

OTHER EU POLICY

Commission seeks to make regulation smarter

On 8 October 2010, the European Commission published a communication on smart regulation (COM(2010)543) setting out plans to further improve the quality and relevance of EU legislation. This would include a more comprehensive impact assessment. Public consultation periods would be extended from 8 to 12 weeks from 2012 onwards and planned proposals would be made more foreseeable which would allow interested parties to prepare themselves at an earlier stage. Regarding implementation, the Commission underlines the importance of strict enforcement by the member states.

The Commission also approved the 2009 Report on Subsidiarity and Proportionality and addresses its aim to cut red tape by 25% by 2012.

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

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Communication: **EN** **FR** **DE**

IMPRESSUM

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

Editor: Rudolf Reibel, LL.M., CFE Fiscal and Professional Affairs Officer

If you have any suggestions or questions, please feel free to contact the editor:
brusselsoffice@cfe-eutax.org

Layout: Laëtitia Bois, Administrative Assistant

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