European Tax Report
Confédération Fiscale Européenne (CFE)

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NEWS - EUROPEAN COMMISSION

EXPERT GROUP

Fiscal Compliance expert group launches report to modernise EU fiscal compliance procedures

In contrast to the USA, cross-border post-trading within Europe is much more costly and complex as the systems have been developed nationally at the time when cross-border activities were limited. In our days, fiscal compliance barriers are a real obstacle for cross-border transactions. Therefore the European Commission's Fiscal Compliance Group (FISCO) has worked solutions related to clearing and settlement of cross-border securities transactions which is also known as post-trading. On the basis of the proposed solutions the European Commission will now consider concrete actions.

Reduce administrative burden

The main conclusion is that the administrative burden shall be relieved which could be realised by allowing any intermediary to either assume full withholding responsibilities or to take responsibility for granting withholding tax relief by sending pooled withholding rate information to the upstream intermediary. Moreover electronic certifications and other use of modern technology should replace paper certifications.

About the experts group

FISCO, composed of 15 high-level-experts, mainly from the private body and academia, gives advice on the removal of fiscal compliance barriers to the post-trading of EU cross-border security transactions. In 2006 the Group published their first report on: "Fact Finding Study" examining EU Member States' fiscal compliance procedures.

Read more (click to open):

Press Release / European Commission on Fiscalis Group

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FISCO: Fiscal Compliance Group

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INFRINGEMENT PROCEDURES

Spanish corporation tax law is incompatible with EC Treaty

Under the Spanish corporation tax law, Spanish companies are allowed to deduct tax deriving from acquiring a stake in non-Spanish companies. The European Commission is of the opinion that these measures might provide an advantage for Spanish companies acquiring foreign ones with respect to acquisitions of other Spanish companies. "Many believe this scheme gives an advantage to Spanish companies buying foreign companies. Opening this investigation will let us find out whether these concerns are justified", explained Commissioner for Competition Neelie Kroes.

European Parliament sent complaints

Members of the European Parliament as well as formal complaints had been sent to the European Commission alleging that the tax regime is unlawful. The scheme could attract the location of international holding activities in Spain, while domestic groups seem to be excluded from the scope. If the investigation finds that the measures in place are incompatible with EC law, Spain may have to recover the aid illegally granted.

Read more (click to open):

Press Release / European Commission on State aid: Commission opens formal investigation into Spain's tax scheme for the acquisition of shares in foreign companies

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Cross-border loss deduction in Germany

Germany has been requested by the European Commission to modify its legislation on cross-border loss deduction which is considered incompatible with the free movement of services and the free movement of establishment.

Under the German income tax law, losses can be offset without restriction within the same income category and against other income categories as long as the income has not been generated from foreign sources. This represents a difference of treatment of income and leads to a higher taxation which is contradictable to the Single Market.

The European Commission's approach is supported in the judgment of the European Court of Justice (Case C-347/04) from 29 March 2007 and has been also advocated in the Communication on tax treatment of losses in cross-border situations (COM(2006)824) from 19 December 2006.

Further steps

If Germany does not respond satisfactorily to the reasoned opinion (2nd step of an infringement procedure), the European Commission may decide to refer the matter to the European Court of Justice.

Read more (click to open):

Press Release / European Commission on Infringement proceeding against Germany for its discriminatory rules applied to cross-border loss offset

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Taxation of energy products and electricity – New infringement proceedings against France

As France has failed to implement a Court ruling relating to non-transposition by France of the Directive on energy taxation (2003/96/EC) the European Commission has initiated further infringement proceedings in the form of a letter of formal notice. In a second step the European Commission might refer the matter to the Court of Justice and propose that the Court impose a penalty payment under Article 228 of the EC Treaty.

France failed to impose Directive

In a first infringement proceeding the European Court of Justice ruled that France failed to fulfill its obligations. Following to the judgment the European Commission requested the French government to inform about the measures taken to adapt the legislation. Up to now the European Commission has only received an incomplete communication of the measures necessary for transposing the Directive in national law.

More tax efficiency and less burden

The objective of the Directive is to reduce the distortions of competition among EU Member States (as a result of different tax rates), among mineral oils and other energy products and to reinforce measures to encourage energy efficiency. The Directive should have been implemented by Member States until 31 December 2003.

Read more (click to open):

Press Release / European Commission on Taxation of energy products and electricity

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Car taxation in Finland and Poland discriminate European Law

The European Commission has sent two requests in the form of a „reasoned opinion" to Poland and

Finland as in both countries discriminatory rulings regarding the registration of cars are in force. The European Court of Justice found consistently in earlier cases that each Member State is allowed to levy a registration tax as long as Art. 90 of EC Treaty is respected which means that the taxation for cars from a non-residential country is equal to domestic cars.

Abolishing registration tax would lower discriminiation

"The case law of the Court of Justice has helped to resolve some of the problems of tax a discrimination that European citizens face when they move their cars from one country to another. However many problems still remain (..). I call Member States to rapidly adopt the Commission's proposal for a Directive abolishing registration taxes, whose application would put an end to a large number of discriminations currently existing", Commissioner of Taxation and Customs Union, Laszlo Kovacs commented.

Next step

If Poland and Finland do not reply satisfactorily to the reasoned opinion, the European Commission may refer the matters to the European Court of Justice.

Read more (click to open):

Press Release / European Commission on car taxation in Poland and Finland

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Reduced VAT rate on horses

The European Commission has opened the second step of infringement proceedings against the Netherlands which apply a reduced VAT rate of 6% on horses whereas the European Commission holds the view that the normal VAT rate should be applied.

Strict interpretation of scope for reduced rates

According to the Sixth VAT Directive (Annex III of the Directive 2006/112/EC) only a limited lists of supplies of goods and services may be subject to reduced VAT rates. Included in the list are foodstuffs for human and animal consumption as well as live animals, seeds, plants and ingredients which are normally used to produce foodstuff. In contrast horses are not normally intended to produce foodstuff and it is settled case-law that the exceptions mentioned in the Directive must be interpreted strictly.

Same situation in a number of EU Member States

The European Commission as initiated investigations in similar matters against Austria, Czech Republic, France, Germany, Ireland, Italy and Luxembourg. A letter of formal notice has been sent.

Read more (click to open):

Press Release / European Commission on Reduced rate on horses - second step of infringement proceeding

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NEWS - EUROPEAN COURT OF JUSTICE

Hungarian Local Business Tax is compatible with community law

Cases C-283/06 and C-312/06

In Hungary, municipalities are allowed to introduce a local business tax (HIPA) under the Hungarian Act on Local Taxes. After the accession to the European Union, the Courts in Hungary received a number of claims from Hungarian companies stating that the HIPA is incompatible with European law.
Two Hungarian Courts asked for a preliminary ruling of the European Court of Justice, in particular with the prohibition of EU Member States to introduce or maintain tax schemes which can be characterised as turnover taxes.

Preliminary decision

The European Court of Justice first of all outlined the objectives of the introduction of a common system on VAT which are to establish a common market by eliminating tax differences liable to distort competition and hinder trade. Further the judges adhere that a Member State may introduce a tax which does not display of the essential characteristics of VAT.

In the next step, the Court outlines essential characteristics and compares them to the HIPA. In contrast to VAT which is proportional to the price of the goods and services, HIPA is based on the difference between the turnover linked to the goods sold and purchase price of the goods sold. Thus it is not possible to determine the precise amount of that charge whereas for VAT it is possible on each stage. In addition not all of the taxable persons will have the possibility to pass on the burden of the tax to the consumer which is the case for VAT.

Local business tax is not VAT

The European Court of Justice therefore concludes that HIPA differs in essential characteristics from VAT and is therefore compatible to the provisions of the Sixth VAT Directive.

Read more (click to open):

Press Release / Europrean Court of Justice

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Judgment of Cases C-283/06 and C-312/06

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NEWS - OECD

Fighting offshore tax evasion – more effort is necessary

According to a recently published report by the OECD, many financial centers (offshore and non-offshore) are making progress in improving transparency and international co-operation to counter offshore tax evasion. Still the international standards which have been developed over recent years have not yet been fully implemented.

Access to bank information

Countries like Austria, Switzerland and Luxembourg as well as in financial offshore centers like Panama, Liechtenstein and Cyprus, the access to bank information for tax purposes is restricted. The recently published report “Access to Bank Information for Tax Purposes – the 2007 Report” gives a detailed insight into the developments in six OECD countries with respect to the access for tax authorities to bank information.

Analyses comparing legal framework

Further the OECD released an analysis comparing the legal framework for international tax co-operation in OECD countries. The authors point out that a lack of transparency can be exploited by those who want to avoid paying taxes. However some progress has been made e.g. the number of exchange of information arrangements has been increased. Paolo Ciocca, chair of OECD’s Committee on Fiscal Affairs regards the cooperation and exchange as essential measure to fight tax evasion: “No single country or even a small group of countries can address the issue of harmful tax practices on their own”.

Read more (click to open):

OECD reports on offshore tax evasion

EN **FR**

OECD: Improving access to Bank Information for Tax Purposes / 2007 Report

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OECD: Tax Cooperation / 2007 Report

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IMPRESSUM

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