



# European Tax Report Confédération Fiscale Européenne (CFE)

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## News

### Reverse Charge Mechanism

#### European Commission objects German and Austrian request

Imagine, you are a seller buying goods in another Member State - without paying VAT. Then you disappear as soon as you have charged VAT to your customer. The customer claims a refund of VAT paid to the so called "missing-trader". Consequently the financial losses are imposed on the Treasury in the Member State. "Current estimates on the level of overall tax losses due to fiscal fraud range from around 200 to 250 billion Euros for the EU", underlines Lazlo Kovacs, the Commissioner of Taxes and Customers Union. He continues that especially in the VAT area serious problems are arising.

Nevertheless on 19 July 2006 the EU Commission objected Austrian and German requests regarding the reverse charge mechanism. The legal background is Article 27(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977. Member States may be authorized to apply special measures for derogation from that Directive.

#### The idea of the requests

In general the reverse charge mechanism is based on the idea that the supplier does not charge any VAT so that the customer does not reclaim a value-added tax on input. As a consequence the problem of the "missing-trader"

can not occur. The main idea of the requests is introducing the reverse charge in respect of all Business to Business (B2B) supplies of goods/ services where the invoice value exceeds 10,000€ in the Austrian and 5000€ in the German model. Moreover, the German proposal contains an electronic control system making single transactions transparent to the Treasury.

#### Requests do not fall within the scope of Article 27 of the Sixth Vat Directive

Two criterions have to be fulfilled if the European Commission grants a request. First of all, the proposed measure should simplify the procedures for taxable persons and/or tax administration. Secondly certain types of tax evasion or avoidance should be prevented. Regarding the two requests, the European Commission argued that it would affect transactions in all economic sectors - even those which are not affected by tax evasion. In addition the Austrian and German model would result in fundamental changes to the current VAT system. For example one of its characteristics, the fractional payment, would be eliminated. Moreover the European Commission fears more administrative work if the requests are applied, because a generalized reverse charge means that the tax would be collected from a far larger group of taxpayers. Finally the European Commission concluded that Art. 27 is not the correct legal basis for the German and Austrian request and therefore the Institution objected them.

### Action against tax evasion

However tax evasion will be an important issue in future in the VAT sector, especially after the EuGH decision on deduction of input tax. The Court of Justice strengthened the right to deduct input value added tax of a taxable person. The decision stated that the taxable person is not responsible for value added tax fraud as long as she or he does not know or having any means of knowing. Thus in the case of value added tax evasion, the Treasury will have to deal with the financial losses. Therefore the European Commission should concentrate on developing measures against tax evasion and intensify its initiative from 31 Mai 2006 to create a general system to avoid tax fraud.

**Further information  
is available under the  
following links (click to  
open):**

**[Press Release European  
Commission  
IP/06/1023](#)**

Communication from the  
Commission to the Council  
language: [EN](#) [DE](#) [FR](#)

**[Business Game on Reverse  
Charge Mechanism \(only  
available in German\)](#)**

## Labour intensive services

### EU Commission proposes reduced rates

The EU Commission proposes to allow 17 Member States to either continue or start to apply reduced rates on labour-intensive services until the end of 2010. The proposal implements the provisions of Directive 2006/18/EC which allows a reduction of VAT on certain services such as renovation of private dwellings, hairdressing, window-cleaning, domestic cares and small repairs.

### Improving employment

The aim of reduced rates on certain services is to ameliorate the functioning of the internal market and to avoid potential distortions of competition. The European Union has started this experiment also to improve the employment rates and prevent black economy. Member States which already apply certain reduced rates are Belgium, France, Italy, Luxemburg, the Netherlands, Portugal, Spain and the United Kingdom. Eight others, mainly from the new acceding countries, made a new request. Those are Cyprus, Czech Republic, Finland, Hungary, Malta, Latvia, Poland and Slovenia. In addition, Greece wants to extent its scope from the previous request.

### Effect of those measures?

It is doubtful whether those actions have a real impact on improving the current situation. The evaluation report on the application of reduced rates for labour-intensive services adopted by the Commission on 2 June 2003 drew the conclusion that it was impossible to identify with any certainty any beneficial impact on employment or a reduction in the black economy as a result

of reducing VAT rates. Thus it might be useful to take into account other measures e.g. reducing taxes and charges to increase employment. However the Commission launched a new study by an independent think tank on the impacts of reduce rate on employment, economic activity and the functioning of the Internal Market, which will be published in 2007.

**Further information is available here (click to open):**

Commission Services  
evaluation report  
languages: [EN](#) [DE](#) [FR](#)

Council Directive 2006/18/EC  
languages: [EN](#) [DE](#) [FR](#)

Press Release European  
Commission IP/06/1057  
languages: [EN](#) [DE](#) [FR](#)

## News - Infringements

### VAT

#### Germany: Treatment of services supplied by executors of wills

The EU Commission refers Germany to the Court of Justice on account of its treatment of services supplied by executors of wills. According to German law, these services are always taxed in the place where the executor is established. By contrast the Commission considers these services similar to the services of lawyers and therefore, according to the provisions of the Sixth VAT Directive, should be taxed where the recipient of the service is established. Hence, the

European Commission concludes that the German authorities' interpretation may result in double taxation and has to be changed.

Case number: 2005/4161

#### Greece: Electronic invoices

In general the adoption of harmonised rules concerning the issuance and storage of invoices was a major step towards simplifying the obligations and reducing costs for taxpayers. Today, invoices issued in one Member State allow clients in other Member States to deduct the relevant input VAT, whereas electronic invoicing and electronic storage of invoices are possible. From the Commission's point of view, Greece has failed to correctly transpose the agreed common rules. Therefore, the Institution has issued a Reasoned Opinion requesting that Greece amend its legislation within two months of this receipt.

Case number: 2001/2176

#### Ireland: Treatment of public bodies as non taxable persons

According to the Sixth VAT Directive, public bodies should be treated as taxable persons where doing otherwise would result in significant distortions of competition. Instead, the Irish public bodies neither charge VAT, nor are they entitled to deduct the VAT incurred on their costs. Thus, the European Commission has issued a Reasoned Opinion requesting that Ireland amend its legislation within two months.

Case number: 2004/4084

## **Italy: Restriction in the right to deduct VAT**

As the right of deduction is one of the fundamental principles governing the whole VAT system, the Member States do not have the possibility to introduce exceptions, unless such exceptions are covered by the Sixth VAT Directive. Italy maintained its restriction of the right to deduct VAT on acquisitions of goods and services related to motor vehicles and on the acquisition of fuel and lubricants from 1 January 1979 until the present time. The EU Commission has the opinion, that Italy has infringed the Sixth Directive, because the restrictions maintain a structural and permanent character. Hence, the Commission has decided to send a Reasoned Opinion asking Italy to change its legislation within 2 months from the receipt of this letter.

Case number: 2005/2302

## **Italy: The Eighth and Thirteenth VAT Directives are not applied correctly**

Taxable persons with fixed establishments in one country are required to obtain VAT refunds by way of the Eighth or Thirteenth VAT Directives. The Eighth and Thirteenth VAT Directive establish the procedure by which a non established taxable person who does not carry out any output transaction in a Member State, and does not maintain a fixed establishment in that Member State can receive a refund of the input VAT paid in that same State.

According to the Italian legislation, a taxable person whose main place of establishment is in another Member States but who has a fixed establishment in Italy, must make use of the refund procedure in the Eighth VAT Directive to obtain a tax refund. Similarly,

a taxable person whose main place of establishment is outside the Community but who has a fixed establishment in Italy, must make use of the refund procedure in the Thirteenth VAT Directive. The Commission has found the Italian legislation infringing the scope and purpose of the Eighth and Thirteenth Directive and, after having given the opportunity to express its observation with a Letter of Formal Notice, has decided to send a Reasoned Opinion asking Italy to change its legislation within the deadline of two months from the receipt of the letter.

Case number: 2003/4648

## **DIRECT TAX**

### **Belgium: Discrimination on personal tax deductions for residents with foreign income source**

From the point of view of the European Commission, the Belgian law discriminates Belgian residents with both Belgian and foreign income. They are not benefiting from a fully deduction of personal and family allowances. The Commission considers that this is against the EC Treaty. Therefore she has send Belgium a formal request to amend its legislation.

Case number: 2005/4576

### **Belgian: Discriminatory taxation of inbound dividends**

Under the Belgian tax system, the double taxation is only for inbound dividends, while there is none for domestic dividends. The European Commission is of the opinion, that this difference in treatment is contrary to the freedom of establishment and the free movement of capital. Thus, the Commission has sent a formal

request to Belgium to amend its legislation. In addition the Commission obliges the Member States to apply the same system that they have to avoid double taxation on domestic dividends to inbound dividends. The European Court has interpreted the EC Treaty accordingly in the case Manninen (case C-319/02).

Case number: 2005/4504

**Further information is  
available here (click onto  
the links):**

Press Release European  
Commission IP/06/1058  
languages: [EN](#) [DE](#) [FR](#)

## **CFE-News**

### **CFE Conference in Amsterdam**

The coming CFE conference "The influence of European law on indirect taxation" will be held on 24 November 2006 in Amsterdam. It is organised in cooperation with the Dutch Organisation of Tax Advisors (NOB) and the Amsterdam Center for International Law (ACIL).

For more information and registration click [here](#).

### **CFE Events in London**

This year, the CFE events will take place in London on 27th to 30th September 2006. The events will be opened by a conference on "Creating a competitive corporate tax environment in Europe" on Wednesday. Beside the CFE technical programme which

takes place on Thursday and Friday, the organisers offer a varied social programme.

For more information and registration click [here](#) (go to "Activities" and then "Events").

## EU Personalities

July 2006:

Mr. Stephen Bill has been appointed as the Head of Cabinet of the DG Taxation and Customs Union. He has worked in the DG TAXUD for 25 years, where he was responsible for the preparation of legislation relating to VAT on imports and exports.

## Events

### August 2006:

21/08 - 01/09:

IBFD International Tax Academy Summer Course:  
Principles of International and Comparative Taxation, Amsterdam, Netherlands.  
phone: +31/20/554/0100  
fax: +31/20/620/9397  
email: ita@ibfd.org

### September 2006:

14/09:

EC Direct Corporate Taxation Conference (1 day)  
Amsterdam, Netherlands.  
phone: +31/20/554/0100  
fax: +31/20/620/9397  
email: ita@ibfd.org

24/09

CFE conference in Amsterdam  
"The influence of European law on direct taxation. Recent developments."  
Information/Registration:  
[www.cfe-eutax.org](http://www.cfe-eutax.org) (go to "Activities" and then "Events")

25/09 - 29/09:

7th International School on Indirect Taxation  
VAT Forum CV/SC, O.L.  
Vrouwstraat 6/4, B-1850 Grimbergen (Belgium)  
phone: +32/2/2724439  
fax: +32/2/2724430  
email: info@vatforum.com  
www.vatforum.co

27/09 - 30/09

CFE meetings in London  
Chartered Accountants Hall  
Morgate Place  
London EC3P 2BJ  
For further information click [here](#) (go to "Activities" and then "Events").

## Impressum

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