



# European Tax Report

## Confédération Fiscale Européenne (CFE)

16 October 2006 - Issue 11/2006

### News - Indirect Taxes

#### VAT

### Reverse Charge Procedure for electronic sector in the UK

On 10 February 2006 the United Kingdom requested authorization to introduce a measure derogating from Article 21(1)(a) of Directive 77/388/EEC in the electronic sector. The proposal of the EU Commission allows for the authorisation of the reverse charge until 31 December 2009.

As the UK suffers from the Missing Trader Intra-Community Fraud (MTIC), especially in the electronic sector, the UK government asked for applying a reverse charge procedure for certain electronic goods e.g. digital cameras, MP3 Players, hand-held computers etc.. Under this procedure the taxable person to whom the supplies of goods are made becomes the person liable to account for the VAT to the treasury (see European Tax Report, Issue 9/2006).

#### Point of view of the EU Commission

The EU Commission underlines certain concerns against the request. The Institution points out that a reverse charge procedure means a fundamental change in the VAT system. Thus the taxable persons have to deal with three different types of tax regime (classical VAT system, reverse charge system for B2B supplies, intra-Community system). Moreover the reverse charge offers also new possibilities for tax evasion. Despite those concerns the EU Commission proposes authorizati-

on for the UK to apply the measure derogating to the Council of the EU. The institution decides that the scope of the measure appears to remain within the scope of Article 27 due to the fact that the number of taxpayers concerned and the economic importance of their activities are limited in the electronic sector.

#### Next steps

The EU Commission's proposal will be submitted to the Council of the EU who may authorize any Member State to apply special measures for derogation from the Directive. All other Member States who experience similar issues, may seek also derogation.

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

Proposal of the EU Commission authorising the United Kingdom to introduce a special measure derogating from Article 21(1)(a) of Directive 77/388/EEC

languages: [EN](#) [FR](#) [DE](#)

#### Council Decision

#### Special measures of VAT relating on expenditure on fuel for the UK

The Council adopted a Decision authorizing the United Kingdom to apply special measures for determining the proportion of

VAT relating to expenditure on fuel used for private purposes in business cars on the basis of CO2 emissions (12575/06) from 1 May 2007 until 31 December 2015.

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

Press Release of the EU Council Competitiveness (Internal Market, Industry and Research) p. 17

languages: [EN](#)

#### Proposal from the EU Commission

#### EU Commission proposes increases of minimum rates for alcohol taxation

From 1 January 2008 the European Commission suggests to increase the minimum rates of excise duty on alcohol and alcoholic beverages. The Finance Minister of the Member States support the proposal to avoid the EU system of minimum rates becoming meaningless due to the inflation since 1992 when those rates were agreed.

#### Increasement about 31%

The minimum rates should be increased about 31% according to the rate of inflation from 1993 to 2005. But nobody who likes drinking alcohol has to fear that in future he will not be able to afford his beverages: the majority of

the Member States are not affected by this proposal as their national rates already exceed the proposed minimum rates. Those who might have difficulties to adjust their national rulings enjoy a transitional period until 1 January 2010.

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

Proposal of the EU Commission amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages

languages: [EN](#) [FR](#) [DE](#)

Press Release from the European Commission  
Alcohol taxation: Commission proposes increases of minimum rates

languages: [EN](#) [FR](#) [DE](#)

## European Court of Justice (ECJ) - Indirect Taxes

**C-128/05**

### Commission of the European Communities v. Republic of Austria

On 28 September 2006 the European Court of Justice (ECJ) gave its decision in Case C-128/05. Under Austrian law non-resident carriers rendering passenger transport services on an occasional basis are relieved of the obligation to file VAT returns if their annual turnover is less than 22 000 Euro.

#### Issue

Is the Austrian special arrangement applicable to passenger

transport under the provisions of the Sixth VAT Directive – in particular the simplified procedures applicable to small undertakings under Art. 24(1) of the Directive?

#### Decision

The ECJ arrived at the conclusion that in this issue Austria exceeds the powers enjoyed by the Member States under the above mentioned article of the Sixth Directive since it does not adopt a „simplified procedure for charging and collecting tax“ but exempts the undertakings concerned from declaring and paying VAT.

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

C-128/05  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

**C-72/05**

### Hausgemeinschaft Jörg und Stefanie Wollny v. Finanzamt Landshut

In 2003 the living community Jörg and Stefanie Wollny constructed a building which was fully allocated to its business of exploiting that immovable property. That building comprises the privately used rooms of the two members of the household and the rooms of a tax adviser's office which were let to one of those members. The part which is let constitutes 20.33% of the building. That letting is subject to VAT.

#### Issue

The ECJ took the view that a decision in the case depends on determining the taxable amount relating to the private use of a

building which has been allocated, in its entirety, to the household's business. Therefore the concept of 'full cost' must be defined as Article 11(A)(1)(c) of the Sixth Directive does not give an interpretation.

#### Decision

Article 11(A)(1)(c) of Sixth Council Directive 77/388/EEC of 17 May 1977 as amended by Council Directive 95/7/EC of 10 April 1995, is to be interpreted as meaning that it does not preclude the taxable amount for VAT in respect of the private use of part of a building treated by a taxable person as forming, in its entirety, part of the assets of his business from being fixed at a portion of the acquisition or construction costs of the building, established in accordance with the length of the period for adjustment of deductions concerning VAT provided for in Article 20 of that directive.

That taxable amount must include the costs of acquiring the land on which the building is constructed when that acquisition has been subject to VAT and the taxable person has deducted that tax.

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

ECJ C-72/05: Judgement, Opinion and Application

languages: [EN](#) [FR](#) [DE](#)

**C-228/05**

### Stradasfalti Srl v. Agenzia delle Entrate Ufficio di Trento

In 2004, Stradasfalti applied for a refund of the input VAT on motor vehicles and the fuel for them in respect of the years 2000 to 2004. The local tax office rejected those claims.

## Issue

The question was whether or not national rules precluding deduction of input VAT on motor vehicles which are not intrinsic to the taxable person's business activities as such, or on fuel for such vehicles, may be justified on the basis of Art. 17(7) of the Sixth VAT Directive.

## Decision

The above mentioned article does not authorize a Member State to adopt measures which exclude certain goods from the system of deducting VAT which contain no indication concerning their limitation in time and/or which are part of a body of structural adjustment measures whose aim is to reduce the budget deficit and allow State debt to be repaid.

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

C-228/05  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

### **C-181/04, C-182/04, C-183/04 Joined Cases Elmeka v. Ypourgos Oikonomikon**

The ECJ gave his decision on 14 September 2006 in the joined cases of Elmeka v. Ypourgos Oikonomikon (the Greek tax administration).

## Issue

The judgment clarified under which circumstances vessels are zero rated according to the Sixth VAT Directive.

## Decision

Art. 15(4)(a) of the Sixth VAT Directive must be interpreted as applying only to vessels used on the high seas for the carriage of passengers for reward and for commercial, industrial and fishing activities. Referring to Art. 15(8) the services can only be zero rated if they are supplied to the ship owner for the direct needs of seagoing vessels.

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

C-181/04; C-182/04; C-183/04  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

## C-140/05

### **Amalia Valesko v. Zollamt Klagenfurt**

Mrs. Valesko, an Austrian citizen, returned from Slovenia to Austria and wanted to take 200 cigarettes with her. The customs office took 175 of the cigarettes away because the Austrian Law on Tobacco Duty allows importing only 25 cigarettes.

## Issue

The question was whether or not the Austrian Law on Tobacco Duty is against the Community Law which allows 200 cigarettes to be imported.

## Decision

The ECJ gave his decision on 5 October 2006. He stated that the Member States have the power to reduce the quantity of 200 cigarettes which are mentioned in Art. 5(8) of the Directive 69/169/EEC. Therefore the 25 cigarettes

can still be based on the Directive. Furthermore the level of taxation products is considerably lower in Slovenia than in the Community Law imposed. Thus it is not comparable to that of other third countries.

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

C-140/05  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

### **Joint Case C-290/05; C-333/05**

On 5 October 2006 the ECJ gave his decision on the joint cases of two Hungarian citizens who questioned the registration duty for imported cars.

## Issue

The ECJ examined the registration duty in the light of Article 90 EC.

## Decision

The Court came to the conclusion that any Hungarian Registration Duty is contrary to community law in so far as it imposes a heavier burden on the imported used vehicles than on similar used vehicles already registered in Hungary.

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

C-290/05; C-333/05  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

the set up of Cadbury Schweppes in Ireland is 'wholly artificial'.

General Advocates Jacobs and Stix-Häckl from March 2005 and March 2006.

## European Court of Justice (ECJ)

**C-196/04**

### **Cadbury Schweppes plc & Cadbury Schweppes Overseas Ltd v. Commissioners of Inland Revenue**

Under UK tax legislation a „controlled foreign company“ (CFC) is known as a company in which a UK resident company holds more than 50%. If the corporate tax in the foreign country is less than  $\frac{3}{4}$  of the rate applicable in the UK, the resident company has to pay the difference between the tax paid in the foreign country and the tax which would have been paid if the company had been registered in the United Kingdom.

#### **Issue**

Cadbury Schweppes plc is the parent company of the Cadbury Schweppes group which includes two subsidiaries in Dublin, Ireland. In 2000 the Commissioners of Inland Revenue claimed corporation tax from Cadbury Schweppes under the CFC national legislation. Cadbury Schweppes appealed before the Special Commissioners of Income Tax who asked the Court of Justice whether or not the national legislation contradicted Community law.

#### **Decision**

The ECJ has given its view as to what CFC rules are acceptable and the case will now be remitted to the Special Commissioners to determine how that ruling fits the facts of the Cadbury Schweppes case.

The Court points out that a national measure restricting freedom of establishment may be justified where it specifically relates to wholly artificial arrangements.

Thus the Special Commissions will be further argument as to whether

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

C-196/04  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

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

C-475/03  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

**C-475/03**

### **Banca Popolare di Cremona v. Agenzia Entrate Ufficio di Cremona**

#### **Italy: the IRAP is compatible with EC Law**

On 3 October 2006 the EJC gave its surprising decision that the IRAP are compatible with the EC Law. The IRAP was introduced 1997 Italy to replace the local income tax (ILOR) and a number of other taxes.

#### **Issue**

The question was whether or not IRAP includes characteristics of the Sixth VAT Directive. The Directive prohibits that there are taxes implemented or retained which include criterion of tax on sales.

#### **Decision**

The Court concludes that the essential characteristics of VAT do not apply to the IRAP. For example in contrast to VAT, IRAP cannot be considered proportional to the price charged for the goods and services. Another main reason is that VAT taxes only the final consumer and it is neutral which does not apply for the IRAP.

With its decision, the EJC did not follow the conclusion of the

**C-386/04**

### **Centro di Musicologia Walter Stauffer v. Finanzamt München für Körperschaften**

The German Federal Ministry requested a preliminary ruling from the ECJ on 14 July 2004.

#### **Issue**

The question was whether or not the taxation in Germany of rental income of a non resident charitable foundation is compatible with the four fundamental freedoms if a German charitable foundation is exempted from corporate tax on such an income.

#### **Decision**

The ECJ pointed out that the general principle of free movement of capital is applicable because it means a restriction to the free movement if a tax exemption for rental income is granted to charitable foundations only if their residence is in Germany.

The German Federal Finance Court argued that Stauffer was not in an objectively comparable situation with a German charitable foundation, as it only benefited foreign nationals. The ECJ rejected this point of view on the following main reasons: The German legal provisions do not require that the activities should be carried on the



national territory. Furthermore they must benefit the German general public. Stauffer satisfied the requirements for a charitable status under German law and therefore cannot be treated differently.

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

C-386/04  
Judgement/Opinion/Reference

languages: [EN](#) [FR](#) [DE](#)

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

Press Release  
Preparation of Eurogroup and Economic and Finance Ministers Council, Luxembourg, 9 and 10 October 2006

languages: [EN](#)

Council Conclusions on on fiscal rules and institutions

languages: [EN](#)

## Impressum

## News - Other

### EU Council on Fiscal Rules and Institutions on 10 October 2006

A main conclusion of the Council Meeting on 10 October 2006 is that „the revised Stability and Growth Pact (SGP) underlines the important role that national fiscal rules and institutions can play in the attainment of sound budgetary positions and in the respect of the provisions of the Treaty“. Furthermore the Council outlined that there is no „one-size-fits-all“ solution regarding the effectiveness of national fiscal rules, but they should „benefit from strong national ownership as well as from clear political commitment by all the levels of governments and parliaments“.

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