European Tax Report
Confédération Fiscale Européenne (CFE)

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News - Indirect Taxes

COUNCIL OF THE EU

Recast of the Sixth Directive published in the EU Official Journal

From now on the Sixth Council Directive 77/388/EC is replaced by Council directive 2006/112/EC on the common system of value added tax. Over the years the materials had been revised, corrected and supplemented many times. Therefore the European Commission aimed to publish one text which is clear and comprehensive and worked out a proposal for a Council Directive in 2004 which has been adopted by the Council on 28 November 2006. Each individual article has been revised to make it clearer and more concise. Included is also a table of content.

Read more (click to open):

Council Directive 2006/112/EC on the common system of value added tax

languages: **EN** **FR** **DE**

Vat as a priority

On its recent meeting the Council of Economic and Financial Affairs agreed to take forward on the VAT package as a matter of priority, taking also into account aspects related to combating VAT fraud. The package includes the following elements: a draft directive on the place of supply of services as concerns VAT payments, two draft directives and a draft regulation on simplification of cross-border VAT obligations (one-stop-scheme) and refund procedures for businesses and a renewal of VAT arrangements for e-commerce.

Anti-fraud strategy

In his conclusion the Council pointed out the urgenneed to establish an anti-fraud strategy, especially in the area of indirect taxation. Thus the Commission is invited to prepare the elements of such a strategy in close co-operation with the Member States. Priority should be given to the following aspects: exploring ways to take more efficient measures against fraudsters, possibilities for quicker and more detailed exchange of information between Member States and the examination of potential legal changes to the current VAT system in view of enhancing the legal possibilities for combating fraud.

Read more (click to open):

Press Release Council Meeting Economic and Social Affairs, p. 26

language: **EN**

Reduced rate of VAT to certain labour-intensive services for Romania

All Member States may temporarily apply a reduced rate to certain labour-intensive services on legal basis of Directive 2006/18/EC for an experimental periode of three years until 31 December 2010. The EU Commission has launched this to experience the effects in term of job creation and combating the „black economy“. Rumania, new Member state from 1 January 2007, submitted a request to apply these rules also for certain services, which was granted by the Council.

What are labour-intensive services?

Fields in which the rules apply are small repairs (bicycles, private dwellings etc.), window cleaning and cleaning in private households, domestic care services (e.g. home help and care of the young, elderly, sick or disabled).

Read more (click to open):

Council Directive 1999/85/EC oncerning VAT on labour-intensive services

languages: **EN** **FR** **DE**

Report from the EU Commission on implementing reduced rates for labour-intensive services

languages: **EN** **FR** **DE**

Evaluation Report by the EU Commission

languages: **EN** **FR** **DE**

EUROPEAN COMMISSION

Infringement proceedings against Ireland, Spain and Finland

The European Commission has decided to refer Ireland to the European Court of Justice on its treatment of public bodies as non taxable persons for VAT purposes. In addition reasoned opinions have been addressed to Spain concerning its treatment of certain services suppliedby „registradores de la propiedad“ and to Finland as regards certain services provided by public legal aid offices. If these two Member States do not comply with the respective reasoned opinions, the Commission may decide to refer the matters to the European Court of Justice.

Read more (click to open):

Press Release by the European Commission
Vat and public bodies: Infringement proceedings against Ireland, Spain and Finland

languages: **EN** **FR** **DE**

Infringement cases - Press releases -

languages: **EN** **FR** **DE**

Directive on electronically delivered services

The period of application of the „e-commerce VAT“ Directive shall be extended to 31 December 2008. The EU Commission has made this proposal already in May 2006, but the Council of the EU decided to limit the exception till the end of 2006.

Challenge: Online Market

The trade with certain e-commerce products challenges the EU Institutions. The EU Commission underlined that Art. 9 of the Sixth Directive was not adequate for the e-commerce sector. The main reason is that the internet puts buyers and sellers in direct touch with each other, no matter where they are located and largely obviate the need for intermediaries. From the point of view of the EU Commission, the Sixth Directive created a large scope of distortion in the field of electronic trade.

Paying tax in the country of consumption

Thus the Institution worked out directive 2002/38/EC which was adopted by the Council on 7 May, 2002. Main changes were that the services defined as an electronically supplied service will be taxed in the country where the customer resides rather than where the supplier is located. Moreover the EU supplier selling outside the EU is no longer charged VAT. Electronically supplied services are e.g. supply of images, music, films, webpages, hosting, software etc..

Read more (click to open):

Press Release by the European Commission
Commission proposes to extend the Directive on electronically delivered services

languages: **EN**

Canada tightens tax rules on wine and beer

The EU Commission resists against the new Canadian measures which provide tax relief to Canadian wine and beer and requested WTO consultations with Canada. The new rule has been applied on a provisional basis since 1 July 2006 but is still pending before the Canadian parliament.

Threat to European exportation

The issue is of high interest for the European Union as European companies exported 446 millions euros worth of wine and 110 millions euro worth of beer to Canada in 2005. The exports have been growing steadily.

The consultations requested are the first steps in the WTO dispute settlement process. If they have been proved unsuccessful after 60 days, the EU will be entitled to ask for a WTO Panel to be set up to rule on the legality of the Canadian measures.

Read more (click to open):

Press Release by the European Commission
Discriminatory Tax Rules on wine and beer

languages: **EN** **FR** **DE**

Proposal for abolishing capital duty on the raising of capital

The EU Commission came forward with a proposal to abolish capital duty by 2010 to enhance the development of European Companies. The indirect tax is levied on contributions of capital for capital companies and restructuring operations involving capital companies. From the point of view of the EU Commission, this tax is an obstacle for economic growth.

Capital duty as obstacles

„I consider capital duty as an obstacle to the development of EU companies. Abolishing capital duty is in line with our strategy to create more jobs and growth", outlined Laslo Kovacs, EU Taxation and Customs Commissioner. Only 7 Member States (Greece, Spain, Cyprus, Luxembourg, Austria, Poland and Portugal) continue to levy it.

Read more (click to open):

Press Release by the European Commission
Abolishing capital duty on the raising capital

languages: **EN** **DE** **FR**

EUROPEAN COURT OF JUSTICE

Vat exemptions take preference over zero-rate

The European Court of Justice has given its decision in Case C-240/05. Eurodental, a company in Luxembourg supplied dental prostheses and repaired them for customers in Germany. In contrast to German law, these services are exempt under Luxembourg law. Eurodental deducted input VAT from the goods used to manufacture the products.

Issue

The question was whether or not the company was entitled to deduct input VAT for the goods supplied in another Member State. Thus the Court had to decide if the zero rate which is applicable to intra-Community supplies of goods takes precedence over the exemption.

Decision

The ECJ decided that the supplies of goods are exempt based on Art. 13(A)(1)(e) of the Sixth VAT Directive even if they are intra-community transactions. They do not give rise to the right to deduct input VAT under Art. 17(3)(b) of the Sixth VAT Directive, regardless of the system applicable in the Member State of destination.

Read more (click to open):

Judgement/Opinion/Order
C-240/05

languages: EN FR DE

Greek levy of VAT on roadside assistance is incompatible with Sixth VAT Directive

The Greek roadside assistance body (ELPA) assists motorists whose vehicles broke down or had accidents. Members must pay an annual flat-rate subscription fee for the breakdown service.

Issue

Greece imposes VAT on the full membership subscription while the EU Commission has the opinion that from the ECJ case law on interpretation of the term insurance services part of the motorists' annual fee must be regarded as consideration for insurances services which would be exempt.

Decision

The Court underlined that the term "insurance transactions" describes that the insurer receives the services agreed when the contract was concluded in return for a prior payment of a premium. Thereby it is not essential that the service in return is a sum of money; it may also be all kind of assistance as assistance to persons who have difficulties when traveling. Consequently the ECJ held that the expression "insurance transactions" referred to in Art. 13(B)(a) of the Sixth VAT Directive includes the provision of insurance cover by a taxable person who is not himself an insurer but procures such cover for his customers by making use of the supplies of an insurer who assumes the risk insured. Thus the road assistance provided by ELPA must be exempt from VAT.

Read more (click to open):

Judgement/Opinion/Order
C-13/06

languages: EN FR DE

News - Direct Taxes

Cross border payments of dividends

Two different types of cases were brought against the Commissioners of Inland Revenue before the High Court of Justice. Pirelli, Essilor, BMW and Sony Groups opposed the refusal of the Commissioners of Inland Revenue to grant a tax credit in respect of dividends received by non-resident companies from resident subsidiaries. Those four cases were the first group (Class IV of ACT Group Ligitation) which content that non-resident companies are in a less favourable situation inasmuch as they are not entitled to a tax credit in respect of the corporation tax paid by their resident subsidiaries.

Secondly several claims brought by British American Tobacco (BAT) belonged to the second group of cases (FII Group Litigation). They argued that the UK legislation results in less favourable tax treatment for resident companies having subsidiaries which are resident in other States.

Decision

Payments of dividends by a resident company

As regards the United Kingdom legislation, the Court notes, that where a company resident in the United Kingdom pays dividends to another company, neither the dividends received by a resident company nor those received by a non-resident company are subject to tax in the United Kingdom. The position of a Member State in which both the companies making the distribution and the ultimate shareholders are resident is thus not comparable to that of a Member State which, when the ultimate shareholders are not resident in that Member State, acts only as the State in which the distributed profits are derived.
The Court holds that it is compatible with Community law for a Member State, on a payment of dividends by a resident company, to grant a tax credit only to resident companies receiving the dividends.

Payements of foreign-sourced dividends received by resident companies

As regards foreign-sourced dividends received by resident companies, the Court considers that, where a Member State has a system for preventing or mitigating the imposition of a series of charges to tax or economic double taxation as regards dividends paid by resident companies, it must treat dividends paid by non-resident companies in the same way. In that context, the fact that nationally-sourced dividends are subject to an exemption system and foreign-sourced dividends are subject to an imputation system does not contravene the principles of freedom of establishment and the free movement of capital, provided that the tax rate applied to foreign-sourced dividends is not higher than the rate applied to nationally-sourced dividends and that the tax credit is at least equal to the amount paid in the Member State of the company making the distribution, up to the limit of the tax charged in the Member State of the company receiving t the dividends.

Read more (click to open):

Press Release by the European Court of Justice

C-374/04; C-446/04

languages: **EN** **FR** **DE**

C-513/04
Mark Kerckhaert/Bernadette Morres v. Belgian State

Mr. and Mrs. Kerkhaert-Mors received dividends from Eurofers SARL, a company established in France in 1995 and 1996. They are residents in Belgium.

Issue

The two declared the exact amount of the dividends received by Eurofers SARL. In their tax return they applied to take advantage of the tax benefit provided for in Article 19.A(1) of the France-Belgium Convention corresponding to the French tax at source.

Decision

The Court compared the situation of the complainants with other ECJ decisions in the field of taxation of dividends (Verkooijen, Lenz, Manninen). The judges pointed out in contrast to those cases the Belgian law does not make any distinction between dividends from companies established in Belgium and dividends from companies established in another Member State. Both are taxed at the rate of 25% by way of income tax.

Moreover the Court underlined that the adverse consequences arise result from the exercise in parallel by two Member States of their fiscal sovereignty. In general Community Law does not lay down any general criteria for the attrtibution of area of competence between the Member States in relation to the elimination of double taxation.

To sum up Article 73b(1) of the EC Treaty (now Article 56(1) EC) does not preclude legislation of a member state which makes dividends from shares in companies established in their territory of that State and dividends from shares in companies established in another member state subject to the same rate of taxation without providing for the possibility of setting off tax levied by deduction at source in that other member states.

Read more (click to open):

Judgement/Opinion/Order
C-513/04
languages: **EN** **FR** **DE**

News - Other

EUROPEAN COMMISSION

French tax sheme for video game creation

The European Commission has opened an investigation on state aid into a proposal to grant tax credit for video game creation in France. Under the EC Treaty state aid is possible as long as it does not lead to undue distortion of competition in the common market.

Promoting only cultural products

„We must be sure that the measure will promote only genuine cultural projects and that it will not have the effect on an industrial policy instrument in favour of the video games sector“, Neelie Kroes (Commissioner for Competition) pointed out.

The measure grants a tax credit of 20% of the cost of producing certain video games but the beneficiaries have to fulfill certain criteria: originality of concept and contribution to the expression of European cultural diversity creativity. In general those requirements are very broad which means that also video games based on motor car races might be supported by state aid.

Read more (click to open):

Press Release by the European Commission
State aid: Commission opens investigation into a French tax credit scheme for video game creation

languages: **EN** **FR** **DE**

UK film tax sheme

The European Commission has approved the United Kingdom's film tax incentive scheme on the basis of EC Treaty state aid rules. British film makers should be encouraged to produce cultural British films.
The annual budget is 177 million euro and the scheme has been approved until 2012. The producers who want to be supported by the tax incentives have to pass a UK Cultural Test, including Cultural Content and Cultural Contribution. The state aid allows "enhanced tax deduction" and "payable film credit". The first measure gives film productions the opportunity to benefit from a higher deduction for certain productions costs. The second permits the film company to receive a cash payment of up to 25% of any tax loss.

Read more (click to open):

Press Release by the European Commission

UK film tax sheme

languages: **EN** **FR** **DE**

Consultation on VAT vouchers

The European Commission has launched an online consultation for views from the public and business on a possible reform of the Community legislation on VAT in relation to vouchers.

The consultation is based on the "Consultation Paper on modernising the Value Added Tax treatment of vouchers and related issues".

Deadline: 17 January 2007

Contact:

Email: taxud-vat-vouchers@ec.europa.eu
Fax number: +32-2-299-36-48

Read more (click to open):

VAT: Call for views on the possible review of Community Legislation on the VAT treatment of vouchers

languages: **EN** **FR** **DE**

Consultation Paper by the EU Commission

languages: **EN** **FR** **DE**

News - Publications

Taxation Paper No 9

„The Delineation and Apportionment of an EU Consolidated Tax Base for Multi-jurisdictional Corporate Income Taxation: a Review of Issues and Options‘. Written by Ana Agúndez-García.

languages: **EN** **FR** **DE**

Pricewaterhouse Coopers (PwC)

"Economic effects of the VAT exemption for financial and insurance services"

languages: **EN** **FR** **DE**

Impressum

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