European Tax Report
Confédération Fiscale Européenne (CFE)

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NEWS - INDIRECT TAX

French tax representative regime before the ECJ

France was referred to the European Court of Justice (ECJ) on 5 May 2010. The country has a reverse charge system whereby the client is designated as liable to pay VAT if the supplier or vendor is not established in the country. This is not being contested. However, by derogation from this system, the vendor is allowed to declare in his own tax statement the tax owed by his clients, in principle as reverse-charged, and to offset this from his own due VAT. To be able to do this, a non-established vendor must register for VAT in France and designate a tax representative (répondant fiscal) to declare and pay the VAT on his behalf. This is considered incompatible with the VAT Directive which provides that taxable persons established in the EU and certain third countries should not have to designate a tax representative for VAT in another Member state.

READ MORE *(click to open):*

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

ECJ: Poland may continue to include excise duties payable on acquiring a vehicle in the VAT base amount

In its judgment of 20 May 2010, the European Court of Justice accepted such a provision of Polish law (case C-228/09), dismissing the European Commission´s infringement action. The Commission had argued that the Polish law was incompatible to Art. 78, 79, 83 and 86 of the VAT Directive(2006/112/EC).

READ MORE *(click to open):*

Judgment: **FR** **PL**

NEWS - DIRECT TAX

Commission calls on Greece to respect Court ruling on the taxation of used cars

On 5 May 2010, the European Commission has decided to continue the infringement procedure against Greece on its car registration system, which still discriminates against used cars bought in other Member states, despite some modifications in the law. The Commission has therefore requested Greece, again, to modify the depreciation rules used in the determination of the taxable value of second-hand cars.

READ MORE *(click to open):*

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

Commission brings Belgium and Finland to the Court and sends a reasoned opinion to Spain

On 5 May 2010, the Commission referred Belgium and Finland to the ECJ over their failure to comply with previous formal requests to amend various tax provisions. The Commission also formally requested that Spain amend its inheritance and gift tax regime.

Belgian tax exemption on interests

The Commission has decided to refer Belgium to the ECJ over measures which allow tax exemptions for interest paid by domestic banks, but not for interest paid by foreign banks. Thus, only Belgian residents who have a savings deposit account with a Belgian bank can benefit from the tax advantage. The Commission considers that the Belgian provisions restrict the free movement of capital and the freedom to provide services.

Finnish withholding tax on dividends

Finland is also being referred to the Court because of failure to comply with a reasoned opinion on its legislation which discriminates against foreign pension funds. Dividends paid to a non-resident pension fund by a foreign company based in Finland for tax

purposes are subject to a withholding tax on gross income of 19.5%. Finnish pension funds, on the other hand, are taxed under a special regime: instead of a withholding tax, 75% of dividend income is subject to corporation tax. Since the nominal corporate income tax rate is 26%, the resulting tax rate for dividends paid to Finnish pension funds is 19.5%. However, tax is calculated on their net income, i.e. after deduction of costs as well as current pension liabilities, resulting in an effective tax rate on dividend income paid to a Finnish pension fund of less than 19.5%.

Spanish inheritance and gift tax

The Commission has requested Spain to amend its tax provisions on inheritance and gift tax which impose a higher tax burden on non-residents or assets held abroad. The provisions are considered incompatible with the free movement of workers and capital.

READ MORE *(click to open):*

Summary press release: **EN FR DE ES NL FI**

Details:

Belgium: **EN FR DE**

Finland: **EN FR DE**

Spain: **EN FR DE**

OECD releases the draft contents of the 2010 update to the OECD Model Tax Convention

On 21 May 2010, the OECD Committee on Fiscal Affairs released the draft amendments to the OECD Model Tax Convention and the commentary thereto. As all substantive changes had previously been released for public comments in a number of discussion drafts, OECD is not expecting any more public comments to the document which will be submitted for approval of the Committee in June and the OECD Council in July. The update will also include a number of changes to OECD countries' reservations and observations and to non-OECD countries' positions which are currently being added to the update. Among these will be the elimination of all reservations and positions on Article 26 (exchange of information), which the OECD Council has already approved. A revised version of the Model Tax Convention is expected to be released in September this year.

READ MORE *(click to open):*

News release: **EN FR**

Draft 2010 update: **EN**

OECD releases report on granting of treaty benefits with respect to the income of collective investment vehicles

On 31 May 2010, the OECD released a report which contains proposed changes to the commentary on the OECD Model Tax Convention dealing with the question of the extent to which either collective investment vehicles (CIVs) or their investors are entitled to treaty benefits on income received by the CIVs. These changes are expected to be included in the 2010 Update to the Model Tax Convention (see above).

READ MORE *(click to open):*

News release: **EN FR**

Administrative cooperation and fight against tax fraud

Updated OECD and Council of Europe Convention on Mutual Administrative Assistance in Tax Matters signed by 15 countries

The OECD and the Council of Europe have developed a protocol amending the multilateral Convention on Mutual Administrative Assistance in Tax Matters. On 27 May 2010, the updated Convention was presented at the annual OECD ministerial meeting in Paris and was signed by 11 countries that were already parties to the Convention (DK, FI, IS, IT, FR, NL, NO, SE, UA (Ukraine), UK and US). In addition, Korea, Mexico, Portugal and Slovenia signed both the Convention and the amending protocol which has not yet entered into force.

The Convention provides for a wide range of tools for cross-border tax cooperation including exchange of information, multilateral simultaneous tax examinations, service of documents and cross-border assistance in tax collection, while imposing safeguards to protect the confidentiality of the information exchanged.

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News release: **EN**

Three more Caribbean jurisdictions move up on OECD progress report

On 19 May 2010, OECD moved Dominica, Grenada and Saint Lucia into the category of jurisdictions considered to have substantially implemented the standard on transparency and exchange of information, meaning that, according to OECD definitions, they have signed at least 12 exchange of information agreements conforming to the standard. As members of the Global Forum on Transparency and Exchange of Information for Tax Purposes, each of these jurisdictions agreed to participate in a peer review of their laws and practices in this area.

READ MORE *(click to open):*

News release: **EN**

OECD undertakes to strengthen tax systems to achieve development goals

The initial meeting of the OECD Informal Task Force on Tax and Development took place on 11 May 2010. The Task Force aims to benefit developing countries through putting more resources into the tax area, assisting them in accessing the information necessary to improve how their tax regimes raise revenue and to strengthen good governance. Three subgroups have been proposed to deal with improving exchange of tax information through conclusion of bilateral agreements and assistance in their implementation, to strengthen transfer pricing implementation in developing countries and to examine the issue of county-by-country reporting.

READ MORE *(click to open):*

News release: **EN**

State Aid

Commission closes investigation into Belgian arrangement between tax authorities and company UMICORE

On 26 May 2010, the European Commission has concluded that the arrangement agreed on between the Belgian tax authorities and UMICORE in December 2000 does not constitute state aid. The Commission has therefore closed the formal investigation procedure. The Belgian tax authorities had come to an arrangement with UMICORE under which the company was to pay a fine of €10 million in full and final settlement of a claim that had originally been €20 million. This had caused the Commission to start an investigation in 2003. A parallel investigation by the Brussels public prosecutor´s office had delayed the Commission´s investigation for more than five years. The Commission then concluded that, pursuant to the principle of taxation on the basis of the facts, a VAT rebate was possible in the case of some transactions, and that the settlement agreement had not given rise to any fiscal benefit for UMICORE. The measure did not therefore constitute state aid. The non-confidential version of the decision will be made available under the case number C 76/2003 in the State Aid Register once confidentiality issues have been resolved.

State Aid

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

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

State Aid Register: **EN**

Commission approves tax exemptions for Finnish REITs

On 12 May 2010, the European Commission has authorised the introduction of Real Estate Investment Trusts (REITs) in Finland that will be exempted from corporate income tax in order to encourage investment in affordable rental housing. After receiving assurances on a few changes, the Commission is satisfied that the scheme does not involve state aid as any profits made by the trusts will be subject to tax at shareholders' level very much like the profits made by individual investors investing directly in the real estate market. The non-confidential version of the decision will be made available under the case number N 131/2009 in the State Aid Register once confidentiality issues have been resolved.

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

Press Release: **EN** **FR** **DE** **SW** **FI**

State Aid Register: **EN**

Other Tax Policy

Commission sets out its ideas on European banking resolution funds – but hesitates regarding financial transaction taxes

On 26 May 2010, the European Commission has issued a communication on future network of European ex ante banking resolution funds to be financed by imposing a levy on banks. The paper shall be presented to the G20 states at their Toronto meeting at the end of June 2010. The Commission expressly refrains from including financial transaction taxes or other levies aimed at generating revenue for the member states´ budgets. Those measures should be examined separately.

The funds should not serve as an insurance against failure of banks or for bank bailouts but for ensuring that in case of failure, the winding-up can be processed orderly. The moneys collected should be earmarked specifically for this purpose and not become part of the member states´ budgets.

Regarding the question how the levy should be determined, namely assets, liabilities and profits, the Commission has the concern that even though assets were an indication of risks, a levy on them would be an additional capital requirement. By contrast, the Swedish model (European Tax Report 1/2010, p.8) of a levy on liabilities which had also been recommended by the International Monetary Fund would enable calculation of the moneys needed for restructuring but would not reflect the actual risk, neither would a tax on profits.

The communication does not yet provide details on the size of the funds and how the moneys will be collected. For October 2010, the Commission announced the adoption of legislative proposals and a timetable for a complete EU framework for crisis management.

Different ideas to tax the financial sector

In a discussion event at the European Parliament on 2 June 2010 on taxation on the financial sector to which CFE was invited, a high Commission official explained the pros and cons of various instruments currently under discussion:

A financial transaction tax could raise substantive revenue (one estimate was 20 billion € EU wide although the amount would depend greatly on the tax rate and whether derivatives are included) but would face a high avoidance risk as transactions could relatively easily be relocated. The effect of reducing price volatility was doubted by some experts, also it would

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be unclear whether ultimately the customers and economic operators would have to carry the costs. Furthermore, the question of distribution of revenue would arise as almost 72% of the EU-wide revenue would be raised in the UK alone (almost 87% including Germany).

A bank levy on leverage and risk taking could raise an estimated € 13 billion EU-wide if the "Swedish model" was followed. Financial stability could be increased through discouraging excessive risk-taking while the tax avoidance risk was lower for balance sheet positions than for financial transactions. The risk that clients would have to bear the costs could however not be excluded.

A bonus tax would have to face a number of avoidance effects while an increase in profit tax could actually encourage high risk-taking. A financial activities tax which would essentially be a combination of the two aforementioned options would have similar downsides. Concluding, it was added that a tax on banks in whatever form could not substitute better regulation and supervision.

Financial transaction tax might become subject of the first European citizens' initiative

The left-wing groups in the European Parliament continue to support the idea of linking a financial transaction tax to development and environment objectives.

According to press information, Austrian and German Social Democrats have announced that they intend to launch a European citizen´s initiative on the introduction of a financial transaction tax to overcome the European Commission´s hesitation in this regard. Since the entering into force of the Lisbon Treaty, such initiative is in principle possible (see Art.11 EU, 24 TFEU) but the necessary legislative framework is still under preparation. The Commission has presented a draft regulation. A European citizens' initiative would need to be signed by at least 1 million citizens from at least 9 member stares within one year. If successful, the Commission would have to issue a legislative proposal, provided it is competent to do so under the Treaty.

READ MORE *(click to open):*

Commission communication on bank resolution funds: **EN** **FR** **DE**

The Monti report -a remedy to internal market fatigue?

On 9 May 2010, former Competition Commissioner Mario Monti presented his report on "A new strategy for the Single Market". CFE has prepared a summary of the report.

READ MORE (click to open):

CFE summary: **EN**

Monti report: **EN** **FR** **DE** **IT**

OECD: Policy lessons to be learned from the crisis

In a policy note, OECD has published considerations that governments should take into account to prevent future economic and budgetary crisis. The recommendations advocate more prudent forecasts and greater safety margins to prepare their economies in times of upswings for future downturns, applying a "counter-cyclical economic policy".

READ MORE (click to open):

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

Policy note on „Counter-cyclical economic policy": **EN**

Tax and social security burden on employment falls in OECD countries - development not expected to be long-term

Average tax and social security burdens on employment incomes fell slightly in 24 out of 30 OECD countries in 2009 due to government measures to mitigate the effects of the recession for their economies. Public deficits however make it unlikely that this trend is going to last. Taxes on wages, including both employer and employee social security contributions, are a key factor in companies' hiring decisions and individuals' attitude to work. As such, they indirectly affect employment trends. The OECD publication calculates the difference between the total cost to an employer of employing someone and that person's net take-home pay, including any cash benefits from government welfare programmes.

Other Tax Policy

READ MORE (click to open):

News release: EN FR

Graphs (Excel file): EN

Company Law

Council urges Commission to provide online access to public registers in member states

On 25 May 2010, the EU Competitiveness Council asked the European Commission to continue its work on the interconnection of business registers as presented in the Commission´s Green Paper of November 2009. The aim is to build a network of the existing business registers in the member states and to provide for technically standardised, constantly updated information and a minimum list of documents. Nevertheless, the national registration and their disclosure formalities and data protection rules would remain in place. A centralised access through the planned e-justice portal should be enabled. The aim of these efforts is to facilitate cross-border mergers, relocation and setting up of subsidiaries and to strengthen trust in business partners from other member states through increased transparency.

READ MORE (click to open):

Council conclusions: EN FR DE

2009 Green Paper and public consultation: EN

Stakeholders meeting on the review of the Accounting Directives and IFRS for SMEs on 25 May 2010

by Matthias Kschammer, LL.M., European Law Expert of Deutscher Steuerberaterverband (DStV), Berlin

In November 2009, the European Commission launched a public consultation which ended on 12 March 2010, giving stakeholders the opportunity to express their view on the role which the International Financial Reporting Standard for Small and Medium sized Entities (IFRS for SMEs) should play in a possible review of the 4th and 7th Council Directives (Directives 78/660/EEC and 83/249/EEC).Participants in this consultation were invited to discuss the first draft of conclusions on 25 May 2010 with a delegation of the Commission led by Jeroen Hooijer, Head of Unit F3 - Financial Reporting. The meeting also included a presentation of a study carried out by the European Financial Reporting Advisory Group (EFRAG), showing incompatibilities between IFRS for SMEs and the current Accounting Directives. Furthermore, the Commission presented a discussion paper on the review of the 4th and 7th Directive.

Various international organisations as well as stakeholders from Germany, France and Italy took a quite critical view on the Commission's approach which appears too focused on IFRS for SMEs instead of an open discussion on how European Accounting should be harmonisedThe DStV pointed out that the Executive Summary of the report does not reflect the comments from banks although the consultation included a question asking specifically banks and other users of balance sheets whether they would see a benefit in having a harmonised IFRS for SME-balance sheet. As the Commission had underlined that one of the reasons for harmonisation was to give companies better access to the international finance market, it should be recognised that banks from the vast majority of countries saw no benefit in an IFRS for SME-balance sheet.

The representative from the French "Autorité des normes comptables", responsible for French accounting rules, claimed, that the Commission's approach is missing a political strategy and a thorough analysis of the economic consequences that the adoption of IFRS for SMEs might cause. He emphasised, that it was essential to analyse the needs of the small and medium sized entities first, before discussing a technical solution. The president of the Association Experts-Comptables de France (ECF), Philippe Arraou, criticised that the report did not clearly state that only stakeholders from countries already applying IFRS for SMEs were in favour of a widespread use of the standard.

Richard Martin, representing the English ACCA - Association of Chartered Certified Accountants, pointed out that the question whether stakeholders are in favour of a "widespread use of IFRS for SMEs" might have been interpreted differently by various stakeholders. While some might have had a mandatory application in mind, others might have thought of a voluntary option.

Various industry associations argued that the detailed information in the accompanying notes required by IFRS for SMEs would primarily benefit the companies´ competitors. They also brought forward that

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most small entities had no interest or benefit in their balance sheet being comparable on an international level. They feared that setup costs could outweigh potential benefits from the Standard. For enterprises that are active only locally there is little need for international comparability.

Contrary to that, some commentators from Denmark and Netherlands, including representatives from the "Big Four" Accountancy Firms, pleaded for the possibility to use IFRS for SMEs as an option, arguing that it could bring further harmonisation and increase comparability.

As a second part of the meeting, the EFRAG's presentation of incompatibilities was discussed. Liesel Knorr, the president of the German Accountings Standards Board - DSRC, pointed out that it was essential to observe that the national accounting rules in Europe showed more incompatibilities to IFRS for SMEs than the ones identified between the Accounting Directives and IFRS for SMEs.

The idea of a chapter of fundamental principles, in which the principle of substance over form would be a mandatory principle led to a controversial discussion. Whereas UK representatives were in favour of a principle based Accounting Directive, the French "Autorité des normes comptables" warned that such principle-based rules had aggravated the financial crisis by enabling companies to play one principle against another.

Jeroen Hooijer affirmed that the Commission had no fixed agenda to incorporate IFRS for SMEs into the Accounting Directives and was listening closely to all arguments brought forward. He explained that the Commission's approach was to get feedback from stakeholders at an early stage of the process without presenting an elaborated plan. The Commission will present a detailed proposal for a review of the Accounting Directives later this year.

On 31 May 2010, the Commission officially published the result of the consultation on its website:

EN FR DE

IMPRESSUM

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