European Tax Report
Confédération Fiscale Européenne (CFE)

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NEWS - INDIRECT TAX

European Council

Measures aimed at improving fight against VAT and excise duty fraud

The EU Council of Ministers on 16 December 2008 adopted a modification of the VAT Directive, which enables Member States to detect VAT carousel fraud quickly by speeding up the exchange of information between tax administrations on cross-border transactions. The Council also adopted a Directive on excise duties, which will strengthen the fight against fraud by providing a legal framework for the use of a computerised system to monitor the movement of excise goods within the EU, replacing Directive 92/12/EEC from 1 April 2010. The measures adopted are part of a whole package designed to improve cooperation and the effective exchange of information between national administrations in the fight against tax fraud.

The Commission welcomes the Council decision, and a coordinated EU fight against tax fraud is high on Commissioner Kovács' political agenda. VAT fraud across the EU is estimated to be worth more than the EU budget.

READ MORE *(click to open)*:

Press Release

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Primary priorities in the Tax Field for the Czech Presidency

Fighting Tax Evasion and modernizing Tax Rules are the main priorities during the six months Czech Presidency. The Presidency has identified the fight against tax evasion and tax avoidance as its key priority in the tax field since tax evasion reduces the budgetary revenues of Member States and undermines their ability to react flexibly to current changes in an unfavorable economic situation. The Czech Presidency will focus particularly on improving tax administration and administrative cooperation among the Member States. At the same time, it will endeavor to finalize negations on the amendment to the tobacco taxation directive. The presidency will also put great effort into reaching progress in the discussion about the review of the Savings Directive and the modernization of rules applying VAT to financial and insurance services.

The Czech Presidency has decided not to focus on the equal treatment for tax purposes in the postal market. The introduction of a common postal market in the EU by 2013 means that there must be equal treatment for tax purposes. In 2003, the European Commission suggested that VAT should apply to all postal services but negotiations are in deadlock at Council level. Germany, Denmark, Ireland and the United Kingdom oppose equality of tax treatment. The Czech Presidency is not planning to act in this field but the Swedish Presidency (in the second half of 2009) may decide to look at the issue.

READ MORE *(click to open)*:

Czech Presidency

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The Czech Presidency hopes for VAT compromise by March

In line with conclusions of the December European council the Czech Presidency will try to reach an agreement on reduced VAT rates. An agreement seems more promising since the bilateral meeting between France and Germany on the sidelines of the Ecofin Council Meeting. During the meeting, the ministers outlined a solution to the problem of how to deal with labour-intensive services, which also include catering. France pointed out how urgent the dossier was in so far as it is part of the measures contained in the European recovery plan, an argument that did not leave Sweden indifferent. Lithuania said it had done away with all the reduced rates that it had applied. Poland and Malta stressed it was important that there should be equal treatment by Member States. Agreeing with Germany, Denmark also gave its support to the roadmap that the Czech Presidency presented to delegations with a view to reaching a political agreement in March. Germany underlined the importance of developing an overall approach to reduced indirect taxation in Europe. Thus, according to Germany it would be better to debate all the issues, those on the table and those being prepared, including those on green products and services.

The Commission will not, it appears, be able to make any proposals for a directive on energy efficient products and services before March, preferring to include a possible legislative initiative in a package on green taxation, covering a review of the rules on the taxation of energy products.

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

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Excise Movement and Control System (EMCS)

On 16 December, the Council unanimously adopted a proposal for a directive providing a legal framework for the Excise Movement and Control System (EMCS) for goods such as alcoholic drinks, tobacco products and mineral oils. Slovenia removed its reservations, which were not against the EMCS, but against the transitional period granted to Greece to close the duty free shops in its ports and airports. In a statement attached to the directive, Slovenia says that the seven-year period of grace was too long and ran counter to the policy the EU had hitherto followed in this area. The Council and Commission have said that he directive will not apply to Gibraltar.

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

Press Release

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European Parliament

Support for the idea of exchange of information to tackle VAT fraud

On 4 December 2008, the European Parliament adopted two advisory reports by José Manuel García-Margallo y Marfil (EPP-ED, Spain) on a directive and a regulation to reduce to one month the deadline for submitting to the tax authorities details of intra-EU transactions on which VAT is due, and also the deadline for national tax authorities to submit information on these transactions to the tax authority of the member state where the VAT is due. The EP endorsed without amendment the position of the EP ECON, which backs the main aims of the legislation. It asks the European Commission to draft a report two years after the directives come into force on the administrative costs of the new rules for business and to submit modifications to the amendment if necessary. The EP would also favor a sharing of best practice among member states and the setting up of a database of people involved in VAT fraud.

The MEPs also adopted an own initiative report by Bart Staes (Greens/EFA, Belgium) on the 2007 report of the European Court of Auditors on administrative cooperation on VAT issues. The MEPs criticize the Member States for their poor performance. The Court of Auditors pointed out that the basic conditions necessary for effective cooperation on tackling VAT fraud had not been met and nearly half of all exchanges of information between national tax authorities failed to respect the three month deadline. The MEPs welcome the fact that the European Commission has launched infringement proceedings against Germany for refusing to allow a Court of Auditors' audit.

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

Parliament Decisions

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NEWS - INDIRECT TAX

European Commission

VAT rates in EU Member States

The European Commission has published the VAT rates applicable in the EU Member States as of 1 January 2009

READ MORE *(click to open):*

VAT rates 2009

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Commission proposes equal treatment between electronic and "paper" format invoices

On 28 January, the European Commission adopted a proposal modifying the "VAT" directive (2006/112/EC) in order to boost electronic invoicing, particularly on a cross-border basis. It suggests that VAT invoices should be treated the same whether in electronic or paper format. The proposal follows recommendations by an expert group on reducing the administrative burden. It brings in a technologically neutral solution, by getting rid of technological options (e.g. advanced electronic signature, EDI electronic data interchange system) which the Member States can currently impose on their territory. However, the Commission states that this only is a first step and that it is crucial for the Member States to reach an agreement on a raft of common principles allowing businesses to adopt electronic invoicing solutions.

The proposal aims to reduce the administrative burden by one quarter and therefore also tackles supplementary elements related to invoicing. It will bring in two types of VAT invoice; the "*complete*" invoice and the "*simplified*" invoice will differ in the likelihood of a right to VAT deduction and the checks required both by the supplier and the client. The Commission also has put forward simplification measures for operations of a value not exceeding 200 Euros or involving a consumer not subject to VAT ("B2C" relationship). A harmonised six-month period for the obligatory storage of invoices will also be brought in. Lastly, measures will contribute to the fight against tax fraud. For example, businesses will have to declare cross-border activities within the month following a delivery.

READ MORE *(click to open):*

Proposal for Council Directive 2006/112 EC

EN

CFE Opinion Statement on on VAT formalities - Review of the existing legislation regarding invoicing

European Court of Justice

ECJ upholds validity of taxation on Spanish property transactions (C-151/08)

The ECJ has ruled that Spanish taxes which refer exclusively to property transactions are not incompatible with the Sixth VAT Directive (77/388/EEC). The Spanish Company N.N. Renta SA took a case to the Spanish court, arguing that the application of these taxes, at the same time and on the same basis as normal VAT, constituted unlawful double taxation. The High Court of Justice of Catalonia, asked the European Court to make a ruling based on appropriate Community law. The Court's response was that the Spanish system was not incompatible with the directive. The taxes in question were not of the same type as VAT, the Court pointed out. They do not apply to all goods and services, only to a limited sector and further, unlike VAT, they are not payable by each person involved and seller along the chain of transactions.

The Court concluded, then, that there was no incompatible double taxation. The ruling says, too, that the Sixth VAT Directive expressly provides for the possibility of further taxes, so long as they do not “give rise to formalities connected with the crossing of frontiers” (Article 33 paragraph 1 of the directive).

READ MORE *(click to open):*

ECJ Case C-151/08

FR

NEWS - INDIRECT TAX

Sanctioning mistakes made in VAT declarations is not incompatible with Community law (C-502/07)

The ECJ reached the conclusion in its ruling of 15 January. Polish law imposes fines in the event of overvalued demands for VAT rebates, and fines correspond to 30% of the over-evaluation. The Court recognizes that the fine should be a percentage of the given amount but do not display characteristics of VAT. There is therefore no double taxation or infringement of the sixth VAT directive (77/388/EEC). The case was sent back to the Adminstrative Court in Voïvodie Bydgoszcz, which means a rejection of the appeal lodged by the Polish K-1 company against a fine it had had imposed on it for excessive VAT rebate demands for May 2005.

READ MORE *(click to open):*

ECJ Case C-502/07

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NEWS - DIRECT TAX

European Council

Taxation of Savings

On 2 December 2008, the Ecofin Council adopted conclusions on the taxation of savings income. Calling for "rapid progress of the discussions" on the recent proposal of the European Commission modifying 2003/48/EC to extend its scope of application, it calls on the Commission to continue negotiations and initial talks with third countries. It also went on to call on the forthcoming Czech Presidency to report back to it on the progress of the discussions in the spring of 2009.

READ MORE *(click to open):*

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Coordinating Exit Taxation

On 2 December 2008, the Ecofin Council adopted a resolution on coordinating Exit Taxation. Through this resolution, the Member States undertake to adopt principles to avoid double taxation, as may result from a transfer of economic activities subject to at least two national jurisdictions. This instrument can be seen as an "institutional innovation" in the field of direct taxation, but it is not a matter of harmonisation. In its communication published at the end of 2006 on Exit Taxation the Commission stated that double taxation may arise if the exit state calculates the exit value of an asset transferred in the event of a wash sale when the taxpayer leaves the country, and if the new state of residence taxes all of the added value realised between the acquisition and effective sale. The same may occur due to different national methods for calculating the assets of businesses.

READ MORE *(click to open):*

Press Release

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***Exit Taxes within the European Union* is the topic of the Direct Tax Session of the CFE Forum 2009 (23 April 2009 in Brussels).**

NEWS - DIRECT TAX

European Commission

Switzerland's removes its tax regime for "letter box" companies

On 15 December 2008, the Swiss President, Pascal Couchepin, and the President of the European Commission, José Manuel Barroso, carried out an overview of EU/Swiss relations. The Swiss authorities have announced that they were to remove the fiscal regime for domiciliary companies or "letter box" companies. Switzerland also intends to deal with the profits of holding companies and administration companies in the same way, irrespective of whether these profits are from a Swiss or foreign source. The EU takes the view that the taxation of certain Swiss cantons applicable to certain companies active in the EU constitutes state aid which runs counter to the bilateral free-trade agreement of 1972. Switzerland has refused any interference from the EU in its fiscal competency.

The partners also discussed the revision of the European rules on tax on savings, which Switzerland has taken up into its internal law, by applying equivalent measures throughout its territory. Switzerland is also prepared to discuss an extension of the agreement to other forms of institutions, such as trusts. Like Austria, Belgium and Luxembourg, Switzerland deducts 20% on savings of European citizens held on its territory, this mechanism allowing it to keep the identity of the savers secret. The Swiss President stated that his country was prepared to apply the agreement on the fight against fraud with the countries of the EU, having ratified it.

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

Speach by José Manuel Barroso

FR

Anti-fraud agreement negotiated with Liechtenstein

The European Commission has presented the Council of Ministers with draft decisions on the conclusion of a cooperation agreement between the Community and Member States and Liechtenstein regarding anti-fraud measures.

The Commission believes that the agreement achieves its fundamental aims (*see European Tax Report 8/2008*). Liechtenstein's participation in the EEA and its envisaged adherence to the Schengen acquis has justified tackling illegal activities affecting all forms of taxation, including direct taxes. However, there still remains a difference in the treatment of direct taxes in relation to other trade-related levies, such as customs and indirect taxes. Another aim of the agreement is thus to ensure that Liechtenstein will grant administrative and judicial assistance on fraud affecting direct taxes beyond and besides of what is foreseen in the Liechtenstein Savings Tax Agreement. In this regard, the agreement is innovative insofar as Liechtenstein up to now denied any assistance for fraudulent activities affecting direct taxation and as the agreement is the first one negotiated on a European level to cover all forms of taxes.

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

EU agreements with Liechtenstein

EN

European Court of Justice

Cross-border charity donations not automatically excluded from tax benefits (C-318/07)

For tax purposes, donations to charitable organisations in another member state should, in principle, be treated in the same way as donations to home-based organisations. A Member State can require proof that the body receiving the donation is a charitable organisation, but any legislation which denies cross-border donations the tax benefits enjoyed by donations to nationally-based charities infringes the free movement of capital. The judgment follows on from the Advocate General's ruling of 15 October 2008 (*see European Tax Report 8/2008*)). Additionally, the Court stated that Member States were not required to accept other states' definitions of “charitable”. National tax authorities, however, must apply their criteria consistently to all bodies in the EU, and not exclude some simply because they are established in another Member State.

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

ECJ Case C-318/07

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OTHER NEWS

Studies made for the European Commission

1. Existing legislation and its implementation in EU Member States

A study on the VAT invoicing rules contained in the VAT Directive (2006/112/EC) was carried out for the European Commission. It aims to look at the four principal areas of invoicing - the requirement to issue an invoice, the content of an invoice, electronic invoicing and the storage of invoices - with a view to mapping the existing legislation in all Member States, analysing burdens on business and Member States' control needs, and providing recommendations for a more harmonised and modern set of VAT invoicing rules.

READ MORE *(click to open):*

VAT invoicing study

EN

2. Reduced VAT on environmentally friendly goods

The study examines the potential use of reduced VAT on environmentally friendly goods and the current application of reduced VAT on energy consumption by households. The analysis is carried out in the context of EU policy approach to climate change and energy security, including interaction with other policy instruments at the EU and national levels. The core of this study focuses on what role - if any - should VAT rate policy play in underpinning these objectives.

READ MORE *(click to open):*

Study environmental VAT rate policies

EN

3. Cost and Benefits of Direct Tax Incentives

The study examines the costs and benefits of direct tax incentives (subsidies and tax credits in income taxation) to promote the use and manufacturing of energy-efficient appliances. This is done for four products with high energy-saving potential: refrigerators, washing machines, boilers and compact fluorescent lamps. The cost-benefit analysis is done in a comparative perspective so that the costs and benefits of energy taxation and a regulatory measure are calculated for the same products. The data from four different Member States are used in the analysis.

READ MORE *(click to open):*

Study costs and benefits of direct tax incentives

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4. Implementation of the Tax Merger Directive

The study provides a comprehensive overview of the implementation of the Tax Merger Directive (Council Directive 90/434/EEC as amended) in the 27 EU Member States. The purpose of the survey was to enable the Commission to assess the need for further EU-wide action in this area. The main finding of the survey is that most Member States have correctly transposed the Tax Merger Directive, but it has been under-utilised due to the fact that the corporate law allowing cross border mergers has not been in place in many countries up to recently. This may change with the implementation of Directive 2005/56/EC on cross-border mergers of limited liability companies.

READ MORE *(click to open):*

Study Implementation Tax Merger Directive

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OTHER NEWS

OECD

Study regarding international developments in VAT

In 1965 consumption taxes accounted for 3.8% of GDP across the OECD and by 2006 this had increased to 6.8%. Over the same period the number of countries using a VAT – one of the forms of general consumption taxes – rose from around 10 to in excess of 140. These, and other, developments are explained in the 2008 issue of "Consumption Tax Trends", published by the OECD.

READ MORE *(click to open)*:

Consumption Tax Trends - 2008 Edition

EN

Conferences

Fiscalis seminar on VAT fraud

The Dutch Tax and Customs Administration and the European Commission organised a one day Fiscalis seminar on fighting VAT fraud on 23 January in Amsterdam (*see European Tax Report 08/2008*). Participants exchanged views and ideas on measures developed in the Commission Communication on a coordinated strategy to improve the fight against VAT fraud in the EU, adopted on 1 December 2008. The seminar brought together representatives from businesses, the national tax administrations and the European institutions. It focused on both short term and longer term measures to combat VAT fraud. The workshop document for the seminar is now available at the Commission's website.

READ MORE *(click to open)*:

Seminar Workshop documents

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IMPRESSUM

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