

CFE EUROPEAN TAX REPORT 2006/02

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CFE NEWS

► CFE Forum 2006 on the 27th April

The CFE Forum 2006 will take place on the 27th April in Concert Noble, Rue d'Arlon 82, Brussels. Invitations will follow.

LATEST EUROPEAN DEVELOPMENTS

European Commission:

► **Company taxation: Commission proposes "Home State Taxation" for SMEs**

The European Commission has adopted a Communication that presents a possible solution to the compliance costs and other company tax difficulties that Small and Medium Enterprises face when doing business across borders. The Commission suggests that Member States allow SMEs to compute their company tax profits according to the tax rules of the home state of the parent company or head office. An SME wishing to establish a subsidiary or branch in another Member State would as a result be able to use tax rules and file tax returns in a country with which it is familiar. The "Home State Taxation" system would be voluntary for both Member States and companies and would run for a five-year pilot phase.

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► **Commission decides to refer Spain to the Court of Justice over two tax provisions**

The European Commission has decided to refer Spain to the Court of Justice over its taxation of non-residents' capital gains realised on the sale of Spanish immovable property. Under Spanish law, capital gains of resident individuals derived from immovable property are taxed at a rate of 15%, whereas similar capital gains of non-resident individuals are taxed at a rate of 35%. The Commission has also decided to refer Spain to the Court of Justice over its taxation of non-residents' employment-related income.

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► **Commission requests Portugal to end discriminatory taxation of foreign banks**

The European Commission has sent Portugal a formal request to amend its tax legislation concerning outbound interest payments. A withholding tax of 20 % is levied on the gross interest paid by Portuguese resident borrowers to non-resident lenders. Interest paid to resident financial institutions, on the other hand, is not subject to a withholding tax, although it is subject to the Portuguese corporate income tax. The result is that interest payments to foreign banks may sometimes be taxed more heavily than interest payments to Portuguese banks. The Commission considers that the higher taxation of foreign banks restricts the freedom to provide services and the free movement of capital.

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► Commission tackles Germany over taxation of supplies of services

The European Commission has decided to send Germany a formal request to change its laws and resulting administrative practices regarding the place of taxation of the services provided by executors of wills. German law treats the place of taxation of such services as that from which the executors provide their services. The Commission considers that these services are similar to the services provided by lawyers and therefore that the place of taxation should, under the European Community VAT rules, be the place of residence or establishment of the customer. Germany's interpretation may lead to cases of double taxation.

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► Commission acts against Germany over legislation concerning the pension-savings grant

The European Commission has sent Germany a formal request to amend its legislation on the pensions savings grant that is available to individuals in order to encourage them to make provision for their old age. The Commission considers that the unequal treatment of residents and non residents by certain aspects of this legislation is contrary to the EC Treaty provisions on the free movement of workers and persons.

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► Commission opens investigation into Luxembourg's 1929 tax-exempt holdings

The European Commission has launched under EC Treaty state aid rules a formal investigation into Luxembourg's 1929 legislation exempting holdings and financial companies from corporate taxation. The Commission is concerned that the 1929 legislation creates significant distortions to competition and market efficiency particularly in the financial sector, without contributing to any significant extent to economic development. The inquiry will allow interested parties to comment on the measures under scrutiny. It does not prejudice the Commission's final decision.

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► Energy taxes – infringement procedures against Germany for not implementing two Court judgments

The Commission has decided to take legal action against Germany for failure on two counts to comply with EU rules on energy taxation (Directive 2003/96/EC) and rulings of the European Court of Justice. It will send Germany a "letter of formal notice", the first stage of the infringement procedure laid down in Article 228 of the EC Treaty, over Germany's failure to follow a 2004 ruling by the Court on the range of products which should be taxed as "heating fuels" under the Directive. It will also send Germany a reasoned opinion, the second stage of the infringement procedure under Article 228, because Germany taxes certain fuels used for navigation in Community waters which should be tax exempt in accordance with the Directive, as confirmed in a second Court decision.

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► Taxation of energy products and electricity – Infringement proceedings against France and Germany

The European Commission has decided to send a reasoned opinion to France, the second stage in the infringement proceedings provided for by Article 226 of the EC Treaty, for failure to notify measures to transpose Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity. It has also decided to refer Germany to the Court of Justice for failure to transpose the same Directive.

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► **Commission statement on VAT reduced rates agreement**

European Commissioner for Taxation and Customs Union László Kovács has welcomed the fact that there is now unanimous agreement among EU Member States on reduced VAT rates.

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► **Commission refers Greece to Court over VAT on roadside assistance contracts and over car registration taxation**

The European Commission has decided to refer Greece to the European Court of Justice for its refusal to exempt from VAT the “insurance” aspect of roadside assistance contracts. In a separate case, the Commission has also decided to refer Greece to the Court over its car registration taxation rules. Greece calculates the depreciation on second hand cars imported into the country in a way that does not guarantee that the registration tax will not exceed the residual tax on a vehicle of a similar age that was registered in Greece when new.

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► **Call for input on the forthcoming review of Community Excise Legislation**

The European Commission has launched an online consultation for views from the public and business on reforming Community excise legislation. The consultation is based on a paper which seeks information on the current legal framework (Directive 92/12/EEC) and various aspects of the forthcoming reform. It gives information on the need to review Community excise legislation to provide the necessary legal basis for the Excise Movement and Control System (EMCS). Comments are invited by 30 April 2006.

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► **Commission Regulation of 11 January 2006 concerning IAS**

Commission Regulation No 108/2006 of 11 January 2006 amending Regulation No 1725/2003 adopting certain international accounting standards in accordance with Regulation No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standards (IFRS) 1, 4, 6 and 7, International Accounting Standards (IAS) 1, 14, 17, 32, 33, and 39, International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 6.

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The Council:

► **Agreement reached by ECOFIN on reduced VAT rates**

The Council reached agreement on reduced VAT rates applied by the Member States. The Council also discussed the progress report by the Commission on the economic reform strategy laid down at Lisbon in 2000.

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Council Press Release: [EN](#)

OECD:

► **The Release of a Public Consultation Draft for the Upcoming Tokyo Consultation**

The OECD Centre for Tax Policy and Administration (the CTPA) is organising, in cooperation with BIAC, a consultation between business and government on recent OECD initiatives to improve dispute settlement procedures under tax treaties. The consultation meeting will take place on Monday, 13 March 2006, in Tokyo and will bring together representatives from the private sector and senior government officials of OECD Member countries.

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► **Conference on Transfer Pricing and Customs Valuation, 3-4 May 2006, Brussels**

Multinational enterprises are said to account for over 60% of world trade and transfer pricing has become the number one issue in the international tax arena. While the focus has traditionally been on direct taxation, transfer pricing and its implications for customs now increasingly attract the attention of both governments and business. The OECD and the World Customs Organisation (WCO) jointly organise an international conference that will address the customs duty dimension of transfer pricing.

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► **Improving tax treaty benefits for collective investment funds**

OECD explores ways to improve how tax treaty benefits are effectively granted with respect to investment through collective investment funds. Over 115 participants representing the tax authorities from 29 countries and tax specialists of the financial sector (including collective investment funds, security custodians and real estate investment trusts) met in Paris on 1-2 February 2006 to discuss a number of issues related to the application of tax treaties to collective investment.

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► **Italy will become the 12th Party to the joint OECD/Council of Europe Convention on Mutual Assistance in Tax Matters**

Having deposited its instrument of ratification of the Convention on 31 January, Italy will become on 1st May 2006, the 12th Party to the joint OECD Council of Europe/OECD Convention on Mutual Assistance in Tax Matters. As a Party to the Convention, Italy enhances its ability to combat tax evasion and avoidance through exchange of information on a wide range of taxes, including VAT.

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► **Consultation with Business on Part IV (Insurance) of the Discussion Draft on the Attribution of Profits to Permanent Establishments**

The OECD's Centre for Tax Policy and Administration (CTPA) is organising a consultation with business on Part IV (Insurance) of the Discussion Draft on the Attribution of Profits to Permanent Establishments. That meeting will take place on Friday, 31 March 2006, in Paris at the OECD offices.

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European Court of Justice:

► **Companies unwittingly party to carousel fraud are entitled to reimbursement of input VAT paid, Judgment of the ECJ in Joined Cases C-354/03, C-355/03 & C-484/03**

In its judgment, the Court of Justice points out that the Sixth VAT Directive assigns a very wide scope to VAT and to the key terms 'taxable person', 'supply of goods' and 'economic activities'. It is settled case-law that these terms are objective in nature and apply without regard to the purpose or result of the transactions concerned.

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