CFE EUROPEAN TAX REPORT 2006/08

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CFE NEWS

► Conference on "The Influence of European Law on Direct Taxation - Recent and Future Developments", 24 November 2006 in Amsterdam
This CFE conference is organised in cooperation with the Dutch Association of Tax Advisers (NOB) and the Amsterdam Center for International Law (ACIL). For more information, please visit the CFE Website: www.cfe-eutax.org.

LATEST EUROPEAN DEVELOPMENTS

European Commission:

► Savings taxation: The lists of the national contact points for taxpayers have been published
The contact details of competent national authorities published on this page may be useful in the context of the application of the savings tax Directive. Individuals receiving interest payments from another Member State (or relevant third country or dependent or associated territory of a Member State) may opt to obtain a certificate of exemption from the withholding tax if applicable under the Directive or a related arrangement in that Member State (or relevant third country or dependent or associated territory of a Member State). The tax is not levied where the individual presents to his paying agent, i.e. the person responsible for payment of the interest, a certificate drawn up by his State of (tax) residence where this State declares having been made aware that the individual taxpayer holds savings abroad.
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► The Commission welcomes the adoption by the Council of a Code of Conduct on transfer pricing documentation
The Code of Conduct will standardise the documentation that companies must provide to tax authorities on their pricing of cross-border intra-group transactions ("transfer pricing" documentation). The Code is a political commitment but will not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the European Union. Member States have now to implement the Code as soon as possible in their legislation or administrative practices.
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► Commission decides to take Portugal to Court over discriminatory taxation of foreign banks
The Commission has decided to refer Portugal to the European Court of Justice under Article 226 (2) of the EC Treaty, because Portugal has not amended 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.
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► Commission requests Portugal to repeal fiscal exemption on capital gains from privatisation and restructuring

The Commission has formally required Portugal to abolish Article 25 of the Portuguese Estatuto dos Benefícios Fiscais (EBF), the Portuguese Tax Relief Regulations, because the scheme violates the EC Treaty's ban on state aid liable to distort competition. Under the regime, capital gains from privatisation and restructuring processes are tax exempt for public companies and companies controlled by them.

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► Italy – refund of unduly paid taxes

The Commission has issued a Reasoned Opinion to Italy for not having introduced measures implementing the decision of the Court of Justice in case C-129/00, where certain aspects of the Italian legislation concerning the refund of unduly paid tax were found incompatible with Community law.

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► Commission decides to refer Spain to the Court of Justice for infringements of the Capital Duty Directive

The Commission has decided to refer Spain to the Court of Justice for a number of infringements to the Capital Duty Directive. Spain has not changed its legislation despite a formal request by the Commission dated 13 July 2005.

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► Commission requests Spain to amend its legislation on the fees for the registration of capital increases in the Commercial Register

The Commission has sent Spain a formal request to amend the way in which the fees for the registration of capital increases in the Commercial Register are applied. The Commission is of the opinion that these fees are not in line with the Capital Duty Directive as they are not calculated on the basis of the cost of the service rendered.

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► Commission requests Spain to end infringement to the Parent-Subsidiary Directive

The Commission has decided to send Spain a formal request to amend a rule which automatically assumes the existence of an abuse in cases where a Spanish company pays a dividend to a company established in another Member State which is owned by a company resident in a third country. The Commission considers these rules to be contrary to the Parent-Subsidiary Directive.

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► Commission refers Italy and Luxembourg to Court for failure to adopt measures related to the Parent Subsidiary Directive

The Commission has decided to refer Italy and Luxembourg to the European Court of Justice for failure to adopt and notify the measures required for the implementation of Directive 2003/123/EC, amending the Parent Subsidiary Directive. These Member States have not fulfilled their obligations despite the Commission's formal requests of 5 July 2005.

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► Commission decides to refer Germany to the Court over legislation concerning the pension-savings grant (so called "Riester-Rente")

The Commission decided to refer Germany to the European Court of Justice for not amending its legislation on the pensions-savings grant (Altersvorsorgezulage, so called Riester-Rente). A pecuniary advantage is given to persons building up a supplementary pension under the condition that they are fully liable to income tax in Germany. The Commission considers that the unequal treatment of residents and non-residents is contrary to the Treaty provisions on the free movement of workers and persons.

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► Car taxation: infringement procedures against Poland and Finland
The Commission has decided to send Poland and Finland formal requests to amend their car registration taxation rules. In Poland, the way registration tax is calculated results in a heavier taxation imposed on second-hand cars imported from other Member States. This legislation is not in conformity with Article 90 of the EC Treaty, which states that "no Member State shall impose on the products of other Member States any internal taxation of any kind in excess of that imposed on similar domestic products". In the case of Finland both the amount of registration tax levied on second-hand cars imported from other Member States and the way in which Finland imposes registration tax on leased cars are considered to be not in conformity with Article 90 EC and Article 49 EC, which establishes the freedom to provide services.
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► Infringement proceedings against Sweden (law on tax returns and tax information) and Greece (company law)
The Commission has taken action against Sweden and Greece to ensure that they implement Internal Market laws correctly. The Commission will formally request Sweden to modify an aspect of its taxation legislation requiring foreign financial institutions that are not formally established in Sweden to provide the Swedish tax authorities with annual information on any business they do with Swedish residents. The Commission considers that this requirement tends to dissuade foreign financial institutions from providing cross-border services in Sweden and is therefore incompatible with EC Treaty rules on free movement of services and free movement of capital.
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► Commission requests the United Kingdom to end discrimination of foreign charities
The Commission has sent the United Kingdom a formal request to end discrimination of foreign charities. The United Kingdom allows tax relief for gifts to charities, but only if they are established in the UK. Charities in other Member States are excluded from the relief and the Commission considers that this discrimination is contrary to the EC Treaty.
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► Commission authorises extension of urban tax-free zones scheme in France
Under the state aid rules in the EC Treaty, the Commission has authorised France to continue the existing urban tax-free zones scheme until 31 December 2011, to include 15 new zones under the scheme and to extend the area covered by the 29 existing zones. Small and micro businesses created or opened after 1 January 2006 in the 100 areas classed as urban tax-free zones will be eligible for exemption from employers' social security contributions, profits tax, business tax and real-estate tax.
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► Taxation of energy products and electricity – Infringement proceedings against France
The Commission has decided to refer France to the Court of Justice for failure to notify measures for the transposition into national law of Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity.
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► Energy Taxation: The Commission reviews derogations expiring by the end of 2006
The Commission has adopted a Communication in which it reviews more than one hundred derogations in the Energy Tax Directive that are due to expire by the end of 2006. The review concludes that most of the derogations are no longer needed as the tax measure can continue to be applied on the basis of the optional provisions foreseen for such purpose by the Energy Tax Directive. For those that after 2006 cannot be applied unless a new derogation is granted by the Council, the Communication indicates the Commission's view.
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The Council:

► **Eurogroup and Economic and Finance Ministers Council, Brussels, 10 and 11 July**
At the last meting before the summer break, Finland presented its work programme for the Economic and Financial Affairs Council. On the agenda is, among other things, stability of financial markets, in particular financial markets crisis management, integration of financial markets, alcohol taxation, value-added tax: reform of provisions on the place of taxation for services and simplifying and VAT obligations for businesses.
Preparation: EN

Results: EN

European Court of Justice:

► **C-182/03 and C-217/03, the Court orders the partial annulment of the Commission's decision requiring Belgium to withdraw the tax regime for coordination centres of multinational undertakings**
In 1982, Belgium introduced an advantageous tax regime for coordination centres, which derogated from the ordinary law. In 2000, a Council report found that the Belgian provisions concerning the coordination centres were harmful tax measures which should be withdrawn by 31 December 2005. In 2003, the Council decided that the effects of certain harmful tax regimes could be extended. Also in 2003, the Commission adopted a decision in which it required Belgium to withdraw the tax regime for coordination centres or to amend it in such a way as to make it compatible with the common market. The Court accordingly annulled the Commission's decision in so far as it did not lay down any transitional measures.
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OECD:

► **Attribution of Profits to Permanent Establishments – Current Status of the Project**
The Committee on Fiscal Affairs has completed a review of the progress on the project on the attribution of profits to permanent establishments. It has agreed on next steps for publishing new versions of Parts I - IV of the report and a draft implementation package of proposed changes to the articles and the commentary of the Model Tax Convention.
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