



Professional Law Report Confédération Fiscale Européenne (CFE)

February 2011 / Edition 1

CFE FORUM 2011

CFE Forum on Permanent Establishment on 7 April 2011 in Brussels

The CFE would like to invite you to its Forum, an annual international full-day tax conference, this year devoted to permanent establishment.

Permanent Establishment is a vital concept in international taxation. While for direct taxes, it is mainly defined by the OECD Model Convention, the European VAT Directive and its implementing Regulation provide an EU-wide approach for VAT.

Difficulties arise as terminology and definitions in indirect and direct tax diverge. Moreover, countries have implemented and interpreted the EU and OECD rules in a different way, impacting on issues like cross-border reorganisations, transfer pricing, taxation of dividends and interest and royalties, tax residence, temporary and permanent transfer of assets, place of supply and VAT liability.

In both direct and indirect tax, the concept of Permanent Establishment has undergone very recent changes: The 2010 changes to the OECD Model Convention and Commentary, and in particular the new Art. 7, will be adopted in national law, as speakers from the Netherlands and Germany will report. The effect of the new definition on treaties with other countries will also be considered.

In indirect tax, the discussion will deal with the practical consequences of the adoption of the Regulation implementing the EU VAT Directive in January 2011. The CFE Forum will provide a clear picture of the latest developments and their practical implications for both direct and indirect tax specialists.

For more information, please visit the [CFE website](#).

CFE PUBLICATIONS

CFE presents first European Professional Affairs Handbook for Tax Advisers

On 1 December 2010, CFE released the first-ever European Handbook on professional affairs issues for tax advisers. The compendium deals with the situation in 19 European countries, covering a number of professional affairs issues like e.g. professional qualification and conduct as well as insurance, multidisciplinary cooperation, client confidentiality and cross-border activity. Tax professionals interested in practicing in another country find information about professional rules and contact details in 19 "Country Sheets". An introductory part provides an overview across the participating countries, taking a comparative approach, and explains the EU law context.

The book has 217 pages with coloured charts and can be purchased from CFE for € 25 plus 5 € shipping cost (discounts on shipping for larger orders available). For more information, please contact the CFE Brussels office:

brusselsoffice@cfe-eutax.org

EVENTS

CFE Professional Affairs Conference: A developing relationship: tax authority – taxpayer – tax adviser

In the past years, tax administrations in Europe have developed new forms of closer cooperation with taxpayers. Such efforts aim at raising tax revenues and preventing tax evasion and avoidance but also at improving taxpayer satisfaction and cost savings in the administration through quicker procedures and better allocation of staff. The approaches taken differ from country to country. The conference on 1 December 2010 hosted by the Düsseldorf Chamber and Association of Tax Advisers focussed on the situation in France, Germany, the Netherlands and the United Kingdom with speakers from each of these countries, representing the tax administration, business, tax advisers and academics. It was attended by more than 90 participants from various European

EVENTS

countries including a number of national tax administrations and EU Commission officials.

[READ MORE \(click to open\):](#)

Full report in [CFE Newsletter 1/2011](#), p1

[Photo Gallery](#)

EEA countries. The study in German language contains an analysis in particular of the contact points' websites and their features.

Information on points of single contact specifically for the tax profession can be found in the European Professional Affairs Handbook for Tax Advisers published by CFE (see article on page 1 of this Professional Law Report).

[READ MORE \(click to open\):](#)

Eurochambres survey: [EN](#)

BusinessEurope survey: [EN](#)

Commission note for EU Council: [EN](#)

German Government survey: [DE](#)

CROSS-BORDER TAX ADVICE

Setting up of points of single contact – analyses from various viewpoints

The EU Services Directive 2006/123/EC obliges EU member states to set up points of single contact where cross-border service providers can receive information and complete the necessary formalities to offer services in another member state. The setting up of these one-stop shops is monitored by various organisations some of which have published their observations. The effectiveness of points of single contact in dealing with actual cases of individual service providers remains however difficult to measure.

Eurochambres:

On 31 January 2011, Eurochambres, the European organisation of chambers of commerce and industry, published their latest update of the "Services Directive Implementation Survey" containing answers from the 27 EU countries to 17 questions relating to the setting up of points of single contact.

BusinessEurope:

BusinessEurope representing the European industry published their study on the same day, analysing points of single contact but also the process of screening national legislation for obstacles to temporary or permanent cross-border services.

European Commission:

On 6 December 2010, the Commission informed the Council on progress in the implementation of the Services Directive, mainly on points of single contact.

German Ministry for Economy and Technology:

On 11 October 2010, the German Federal Ministry for Economy and Technology presented a study on the setting up of the points of single contact in the 30

PROFESSIONAL QUALIFICATIONS

Recognition of Professional Qualifications revisited – Commission opens public consultation

The European Commission has opened a public consultation on the future of the Directive on Recognition of Professional Qualifications 2005/36/EC, giving stakeholders the opportunity to comment until 15 March 2011. The Commission is unsatisfied with the low degree of cross-border mobility in regulated professions (like in a number of CFE countries, tax advisers). It therefore concludes that the current recognition regime introduced in 2005 should be improved.

The consultation contains 30 questions covering a large number of aspects, e.g.

- in how far the Directive should be extended to graduates that are not yet fully qualified professionals (qu. 7-8);
- whether the Directive should also deal with partial access to a regulated profession (qu. 6);
- whether there are sectors in which qualification requirements lead to a particular market fragmentation (qu. 16);
- where a professional intends to temporarily practice in another (regulated) member state: whether it is really necessary that s/he proves two years of professional experience (qu. 9), that s/he has to make

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regular annual declarations (qu. 18) and that s/he becomes pro-forma member of a professional body (qu.19);

- where a professional intends to permanently practice in another member state, the other (host) member state may oblige him to take “compensation measures” designed at bridging the qualification gaps between the two countries. A compensation measure is typically an aptitude test but could also be an adaptation period. The Commission asks what experience with “compensation measures” has been made, whether they have a deterrent effect (qu. 4) and whether member states should provide for some approximation of procedures through a European code of conduct for authorities dealing with recognition of professional qualifications (qu. 5);
- regarding the recognition procedure with the competent authorities of the host member state: whether the existing “Code of conduct” ([link](#)) containing recommended practices for competent authorities should become legally enforceable, leading to a more detailed regulated procedure (qu. 3);
- in how far European professional cards could facilitate cross-border mobility; the Commission suggests that such cards could be issued by competent authorities in the home member state, that they could replace any requirements for prior declaration in the host member state and that they should be connected to the IMI (Internal Market Information) system so that competent authorities in different member states could easily exchange information about holders of such cards (qu. 11-14);
- whether European professional training curricula should be developed; such curricula would not replace any national curricula but would apply in addition (qu. 15);
- whether the recognition procedure should include any requirements on continuing professional development (qu. 27);
- what experience has been made with language requirements (qu. 30).

READ MORE (click to open):

Consultation paper: [EN](#)

Commission publishes reports on how recognition of Professional Qualifications Directive works in practice

On 22 October 2010, the Commission issued a staff document criticising the late transposition of the Professional Qualifications Directive and identifying areas of concern such as member states’ reluctance to allow temporary mobility of professionals, admitting that until now, only limited conclusions on improvements through the Directive can be drawn. The paper was followed by a number of experience reports from member states how the Professional Qualifications Directive is applied in practice. These were published subsequently, starting on 27 October 2010. Neither the staff working document nor the reports from the member states address specifically the tax profession.

READ MORE (click to open):

Reports on Commission website: [EN](#) [FR](#) [DE](#)

Staff working document: [EN](#)

Press release: [EN](#) [FR](#) [DE](#)

ECJ: Austrian lawyer with Spanish qualification does not have to complete training period in Austria

On 22 December 2010, the ECJ decided that the Austrian citizen Robert Koller (Case C-118/09, see [European Professional Law Report 2/2010, p.2](#)) who had finished his law studies in Austria, obtained an additional qualification in Spain, was admitted to the Madrid Bar and then intended to practice permanently in Austria is not obliged to complete the 5-year training period mandatory for Austrian lawyers. Nevertheless, he has to pass an aptitude test in Austria as his Spanish qualification does not cover some areas like Austrian procedural law. The judgment is in line with the opinion of Advocate-General Verica Trstenjak delivered last year and therefore no surprise.

READ MORE (click to open):

Judgment: [EN](#) [FR](#) [DE](#)

PROFESSIONAL QUALIFICATIONS

Belgium, Luxembourg, UK, Greece and Portugal still late in notifying the Commission of Professional Qualifications Directive implementation

The European Commission has sent letters of formal notice to Belgium, Luxembourg and the UK for their delay in notifying the Commission on measures taken for the implementation of the Professional Qualifications Directive 2005/36/EC, having already disregarded ECJ judgments to that effect, cases C-469/08 (Belgium), C-567/08 (Luxembourg), and C-556/08 (UK). The ECJ can impose the payment of a lump sum or a fine on member states that do not comply with its judgments.

Greece, Luxembourg and Portugal have failed to implement and notify the necessary measures in the area of recognition of professional qualifications regarding the accession of Bulgaria and Romania. Luxembourg (C-223/08) and Portugal (C-245/08) have already disregarded an ECJ judgment in this matter.

READ MORE (click to open):

Belgium, Luxembourg, UK, Greece
(29 October 2010): [EN](#) [FR](#) [DE](#) [EL](#) [BG](#) [RO](#)

Portugal and Luxembourg
(8 October 2010): [EN](#) [FR](#) [DE](#) [PT](#)

PROFESSIONAL LAW

EP IMCO committee votes for compromise on Consumer Rights Directive – CFE lobbies for workable rules

On 1 February 2011, the responsible Internal Market and Consumer Protection Committee (IMCO) of the European Parliament adopted its amendments to the Commission proposal on a Consumer Rights Directive. The Directive would also affect tax advisers where their clients are consumers, providing for information duties of the tax adviser and giving clients a right to withdraw from a mandate within 14 days for off-premises and distance contracts.

The current definition of off-premises contracts in the “Doorstep Selling Directive” does not include visits to the consumer’s home or place of work if they have been requested by the consumer which the Commis-

sion proposal seeks to change. Unlike the Legal Affairs (JURI) Committee who proposed in its vote on 20 January 2011 that member states could exclude requested visits, the adopted compromise amendment negotiated by rapporteur Andreas Schwab (EPP/CDU, Germany) would not give such possibility. As a consequence, consumer clients would have a right of withdrawal unless they expressly waive this right “on a durable medium” and request that the service begin before the end of the 14-day period. Although the definition of “durable medium” now seems to cover e-mails, the administrative burden on tax advisers would increase. Compared to the Commission proposal, this can still be seen as a progress as the Commission did not even provide for a possibility to waive the right of withdrawal and request immediate service performance, except for very exceptional cases.

Another change contained in the JURI version but not included in the adopted IMCO version was to change the name of the “trader” into “business”. Countries that clearly distinguish between liberal professions and commercial activities, notably Germany, were dissatisfied with the term “trader” and its likely German translation “Gewerbetreibender”.

On 24 January 2011, the Competitiveness Council had voted in favour of a compromise proposed by the Belgian Council presidency in December according to which the Directive should apply only to off-premises and distance contracts and thus not cover consumer contracts concluded in the tax adviser’s office. Also according to the Council compromise, consumer clients would have the possibility to request immediate service performance and waive their right of withdrawal.

The EP plenary vote is currently scheduled for the 7-10 March 2011 session.

The CFE send its Opinion Statement to the members of the IMCO Committee in November 2010, arguing in favour of an exclusion of requested visits from off-premises contracts and for the possibility of consumers to waive their right of withdrawal and request immediate service performance.

READ MORE (click to open):

IMCO website with related materials: [EN](#) [FR](#) [DE](#)

Council press release: [EN](#)

Council compromise: [EN](#)

CFE Opinion Statement: [EN](#)

PROFESSIONAL LAW

Commission publishes results of mutual evaluation and identifies restrictions of cross-border tax advice in various CFE countries – action plan for 2011/2012

On 27 January 2011, the Commission published a communication with related staff working paper drawing conclusions from the “mutual evaluation” of existing restrictions to both cross-border establishment and temporary services in the EU. The “mutual evaluation” exercise has been part of the implementation of the Services Directive (2006/123/EC), see Art.39.

Regulated and liberal professions play a particular role in the communication, notably reserved activities and requirements relating to shareholding and legal form of (tax) firms but also professional indemnity insurance and regulated tariffs are addressed. Regarding shareholding and legal form requirements, the paper expressly mentions Belgium, Germany, Poland and Slovakia. Regarding restrictions of “incompatible activities”, French lawyers and German, Italian, Belgian and Polish tax advisers are named. For authorisation requirements for temporary cross-border tax services, reference is made to Slovakia and Greece.

Section 6.5.5 of the staff working paper deals specifically with the tax profession.

For 2011 and 2012, the Commission announces different forms of action to promote further liberalisation of cross-border services including “formal enforcement measures” already in the first half of 2011.

[READ MORE \(click to open\):](#)

Communication (all languages): [COM\(2011\)0020](#)

Staff Working paper: [EN](#)

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#)
[EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

Commission refers Spain to EU Court over discriminatory rules on fiscal representatives

On 24 November 2010, the European Commission decided to refer Spain to the EU Court of Justice over its provisions in the tax law according to which cer-

tain non-resident taxpayers have to appoint a fiscal representative established in Spain; thus, they cannot be represented by a person from their member state. The rules relate to foreign pension funds located in another member state but providing pension schemes in Spain, insurance companies from other member states operating in Spain, non-resident companies operating in Spain through a permanent establishment and non-residents who are subject to inheritance and gift tax in Spain. The Commission considers that these rules result in discriminatory treatment and are contrary to the freedom to provide services as laid down in Art. 56 TFUE. The Commission had sent a reasoned opinion to Spain in January 2010 which had not resulted in any change of the Spanish law.

[READ MORE \(click to open\):](#)

Press Release: [EN](#) [FR](#) [DE](#) [ES](#)

Commission imposes heavy antitrust fine on French pharmacists professional body for setting minimum prices

On 8 December 2010, the European Commission fined the Ordre National des Pharmaciens (ONP) and its governing bodies €5 millions for imposing minimum prices on the French market for clinical laboratory tests and hindering the development of groups of laboratories in this market in violation of EU antitrust rules and provisions on restrictive business practices (Art. 101 TFEU). The ONP is a professional body whose remit is to ensure that pharmacists in France comply with their professional duties. The Commission found that the behaviour in question had damaged patients and the French state, which have paid more for clinical tests than if competition had been allowed. The Commission has instructed the ONP to put a stop to this practice immediately. According to the Commission, since October 2003, ONP decisions have been systematically targeted at undertakings associated with groups of laboratories with the aim of impeding their development on the French market and slowing down or preventing acquisitions and statutory changes or changes in the capital of these undertakings. These practices still appear to exist.

Furthermore, between September 2004 and September 2007, the ONP took decisions aimed at imposing minimum prices, to the detriment in particular of state hospitals and state health insurance bodies, by seeking to prohibit discounts of over 10% on the public prices granted by private undertakings under contracts. It was found that during the period of the investigation the prices of clinical laboratory testing

PROFESSIONAL LAW

services were often up to two or three times higher in France than in other Member States.

The amount of the fee has been criticised for endangering the existence of the ONP. ONP has appealed against the decision.

READ MORE (click to open):

Press Release: [EN](#) [FR](#) [DE](#)

Commission publishes results of public consultation of Services Directive implementation

On 20 December, the Commission published the responses received in the public consultation on obstacles to cross-border services which was open from 13 June 2010 until 30 September 2011 (see [Euro-pean Professional Law Report 2/2010, p.1](#)). The related website features all responses and a short summary by the Commission as well as a description of remaining cross-border services obstacles for each of the member states.

READ MORE (click to open):

Country by country: [overview](#)

Stakeholder consultation summary: [EN](#)

All contribution received: [overview](#)

ANTI-MONEY LAUNDERING

Commission publishes Deloitte anti money laundering study

On 24 January 2010, the Commission published a study conducted by Deloitte on the application of the EU anti money laundering legislation. The study covers also the issue how “non-financial professions” which include tax advisers deal with the obligations imposed by the relevant EU Directives. It shows that the role the tax profession plays in reporting suspicious cases is very limited, the number of reported

cases being zero or close to zero in all member states except for Belgium, the Netherlands and the UK. This can partly be explained by a certain filter function exercised by professional bodies involved in the reporting procedure. The study observes that tax advisers are seldom the only party involved in transactions and that small tax firms usually lack the resources for customer due diligence and raises the question whether the tax advisers’ involvement in the fight against money laundering is necessary. Regarding the exemption from the reporting obligation for lawyers (and tax advisers) that give legal advice to clients or represent them in judicial proceedings, the study recommends that this exemption should be worded more clearly.

READ MORE (click to open):

Anti Money Laundering Study: [EN](#)

AUDIT AND ACCOUNTING

Commission consulted stakeholders on the future of the audit profession

From 13 October until 8 December 2010, the European Commission consulted stakeholders on a variety of questions on the future of the European audit profession in response to the economic crisis (audit green paper). The green paper suggested far-reaching changes, e.g.

- that auditors could be appointed and paid by regulatory bodies instead of the company audited,
- that auditors could be restricted from offering other services than audit to a particular client,
- that investors who are no members of the profession could be allowed to hold a majority of voting rights and control in audit firms,
- that audits could put more emphasis on forward looking information instead of historical data, or
- that limited SME audits could be introduced by EU law.

The lack of competition in the audit market has been a notorious subject of the Commission, having been addressed in two public consultations in the past years, one on limitation of auditor liability (in early 2007) and another on ownership of audit firms (in 2008/2009). The audit green paper triggered a lively debate in many major professional reviews. The results of the consultations have not yet been published.

AUDIT AND ACCOUNTING

On 9 and 10 February 2011, the Commission will host an international conference in Brussels themed: "Financial Reporting and Auditing: A time for change?". Unfortunately, the conference is fully booked.

Programme: [EN](#)

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#) [EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

Consultation paper: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#) [EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

READ MORE (click to open):

Single Market Act, press release: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#) [EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

Single Market Act, all 50 suggestions: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#) [EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

Council Press release: [EN](#)

Programme of the conference: [EN](#)

INTERNAL MARKET POLICY

Single Market Act: Commission proposes 50 measures to give new impetus to EU internal market and opens public consultation

On 27 October 2010, EU Commissioner Barnier presented the Single Market Act, a package of 50 announced measures to improve the functioning of the EU single market, most of which have been mentioned in earlier documents already. The measures include the further implementation of the Services Directive (point 4), more climate focus on energy taxation (point 8), a proposal for a financial reporting reform (point 14), a CCCTB proposal (point 19) which the Commission intends to present in March 2011, the VAT green paper (point 20, see [European Tax Report 9/2010](#)), electronic signatures and authentication (point 22), the evaluation of the current system on recognition of professional qualifications (point 33) and an extension of the instruments of "mutual evaluation", "single point of contact" and the IMI system introduced by the Services Directive and the Professional Qualifications Directive to other internal market areas (points 44, 45 and 49). The consultation will be open until 28 February 2011.

On 10 December 2010, the Council gave its conclusions on the Single Market Act, showing some reservation in areas touching on subsidiarity such as tax initiatives other than VAT.

The European Commission will host a full-day conference in Brussels on 8 February 2011 on the Single Market Act for which unfortunately, registration is no longer possible.

Internal Market Scoreboard reminds member states to take internal market completion seriously – focus on professional qualifications

On 23 September 2010, the Commission published its latest (21st) Internal Market Scoreboard displaying the state of member states' compliance with internal market legislation. On average 0.9% of internal market directives for which the transposition deadline has passed have not yet been written into national law, up from 0.7% in March 2010, meaning a slight deterioration after years of improvement. The latest result is still in line with the 1% average target agreed upon by the EU heads of state and government in 2007. One third of the member states (AT, IT, FR, CY, CZ, LU, PL, PT and GR) showed a transposition delay of more than 1%. The transposition delay has improved from an average of 9 months in March 2010 to seven months in September.

As regards application of EU law, there has been a slight fall (-2.1%) in the number of infringement cases compared to six months before, taxation being one of the most frequent areas of infringements. Most infringement cases are open against Belgium, followed by Greece.

Malta, Latvia and Slovenia have been identified as the best performing member states as regards the actual application of internal market legislation.

A section of the scoreboard focuses on the effective application of EU rules in the area of mutual recognition of professional qualifications.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#) [EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#) [RO](#)

Internal Market Scoreboard, 21th issue, 23.09.2010: [EN](#)

INTERNAL MARKET POLICY

Council adopts new rules on combating late payment in commercial transactions

The Competitiveness Council of 24 January 2011 adopted an amended Directive on Combating Late Payment after the European Parliament had already adopted the text on 20 October 2010. According to the Directive, invoices have to be paid within 30 days by both private operators and public entities. For the latter, there can be exceptions giving them 30 more days. The measure shall improve payment behaviour, legal certainty and liquidity of enterprises, namely SMEs. In the political discussion, it was often criticised that the payment behaviour of public entities was often worse than of private companies.

READ MORE (click to open):

Council Press release: [EN](#)

Text of the Directive: [EN](#)

Commission addresses liberalisation in professional services when setting 2011 priorities for EU growth

In the first-time publication of an Annual Growth Survey on 12 January 2011, the Commission called the member states to “identify and remove unjustified restrictions in professional services such as quotas and closed shops”. According to Brussels rumours, the initial version of this document also questioned mandatory membership in professional bodies such as chambers, a passage which was later removed.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [NL](#) [IT](#) [PT](#) [FI](#)
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Commission Communication: [EN](#) [FR](#) [DE](#)

IMPRESSUM



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