



CFE NEWS

Register now: CFE Forum 2014 Policies for a sustainable tax future

Thursday 27 March 2014, in Brussels

By addressing the OECD's "Base Erosion and Profit Shifting" (BEPS) Action Plan and the EU proposal for a Financial Transaction Tax, the CFE Forum 2014 will consider two blueprints which will have a major impact on treasuries, and, most of all, on businesses.

Titled "BEPS: Better policies in the EU context?", the first three panels of this one-day conference will forecast what EU tax systems will look like in the near future, after completion of the BEPS project. In what way will BEPS interfere with of the fundamental principles of EU taxation? What will be the implications for companies operating in the EU and beyond in terms of competitiveness, compliance and responsibility?

The last panel will deal with the EU Financial Transaction Tax, discussing feasibility and expectations of this envisaged tax and finally providing an update on recent developments in VAT policy.

Speakers from the European Commission, national governments, tax practitioners and academics will discuss these questions together with the audience.

READ MORE (click to open):

CFE website: [EN](#)

DIRECT TAX

OECD publishes comments received on transfer pricing documentation and country-by-country reporting

The OECD has published the comments received on its public consultation on a review of the existing transfer pricing documentation rules and the development of a template for country-by-country reporting to tax administrations of income, taxes and economic activity, held from 30 January until 23 February 2014.

READ MORE (click to open):

Comments received: [EN](#)

Commission asks Luxembourg to end discriminatory tax treatment of rein- vestment of property income abroad

The European Commission, on 20 February 2014, has requested Luxembourg to end its discriminatory treatment of taxpayers who reinvest property income in another EU/EEA country.

Capital gains resulting from the sale of property which are reinvested abroad are taxable immediately, whereas the same capital gains, if reinvested in property in Luxembourg, benefit from a temporary tax deferral. This arrangement applies to natural persons who own property in Luxembourg regardless of whether they are resident in Luxembourg or in another EU/EEA country. The Commission believes that this constitutes an unjustified restriction on the free movement of services and free movement of capital. The ECJ has already issued a ruling to this effect in its judgment in case C-345/05, Commission v Portugal. The Commission has issued a reasoned opinion, giving Luxembourg two months to react.

READ MORE (click to open):

February infringement package: [EN](#) (available in 14 languages)

DIRECT TAX

US Inland Revenue releases Transfer Pricing Roadmap

The United States' Inland Revenue Service has drafted this document as a practical toolkit to provide transfer pricing practitioners with audit techniques and tools to assist with the planning, execution and resolution of transfer pricing examinations.

READ MORE (*click to open*):

Roadmap: [EN](#)

OECD publishes comments received on technical changes to Model Convention

The OECD has published the comments received on a discussion draft on technical changes to be included in the next update to the Model Tax Convention. The consultation ended on 15 January 2014.

READ MORE (*click to open*):

Comments received by OECD: [EN](#)

CFE Opinion Statement FC 1/2014: [EN](#)

ECJ: Hungarian retail tax could discriminate foreign groups

On 5 February 2014, the ECJ delivered its judgment in preliminary ruling case C-385/12, Hervis, upon reference of the Court of Székesfehérvár/Hungary on a allegedly discriminatory Hungarian retail tax.

In its decision, the European Court of Justice noted that the EU freedom of establishment precludes tax legislation of a member state on the turnover of store retail trade which obliges linked undertakings within a group to aggregate their turnover for the purpose of the application of a steeply progressive rate, and then to divide the resulting amount of tax among them in proportion to their actual turnover, if the taxable persons covered by the highest band of the special tax are mostly linked to companies which have their registered office in another member state. The ECJ has

left it for the referring court to determine whether this is the case in Hungary.

The Hungarian retailer Hervis is part of an Austrian group. Hervis has argued that the tax at issue discriminates companies belonging to a foreign group and leads to a tax liability much higher than those of its Hungarian competitors which are typically not organised in group structures but legally independent entities using a franchise model.

Advocate-General Kokott, in her opinion delivered in September 2013, took the view that the Hungarian tax was not a discrimination but possibly violates EU VAT rules (see [CFE European Tax & Professional Law Report Auguts/September 2013](#)).

READ MORE (*click to open*):

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [CS](#) [EL](#) [IT](#) [HU](#)
[NL](#) [PL](#) [SK](#) [SL](#)

Judgment and Advocate-General Opinion: [EN](#) (All EU languages available)

INDIRECT TAX

ECJ names conditions for different VAT treatment of taxis and other transportation services

Taxis and other local transport services for persons and luggage may be subject to different VAT treatment, as the European Court of Justice specified on 27 February 2014. However, this does not apply if the journeys are carried out under identical conditions. EU law authorises member states to apply a reduced rate of VAT to the 'transport of passengers and their accompanying luggage'. The German reduced VAT rate is 7% for the transport of persons by taxi, under certain conditions.

The case at issue concerned the transport of patients pursuant to an agreement concluded with a sickness insurance fund. This agreement and the fixed fares it provided for applied to taxi undertakings and other (minicab) undertakings offering passenger transportation services. Two minicab undertakings brought proceedings before the Bundesfinanzhof (Federal Finance Court), arguing that their supplies should fall under the same reduced rate applicable to taxis.

While both types of transport services require a license, there are statutory differences, e.g. minicabs can

INDIRECT TAX

respond only to bookings received at their place of business or at the home of the operator, whereas taxi undertakings are authorised to respond on request, which implies that vehicles are stationed at specific locations or placed on call to respond.

As it had doubts as to the compatibility of the differing treatment for tax purposes with EU law and, in particular, with the principle of fiscal neutrality, the Bundesfinanzhof referred questions to the Court of Justice.

The ECJ replied that the principle of fiscal neutrality does not preclude both supplies being subject to a different rate of VAT, if two conditions are satisfied: (1) there are different statutory requirements for both types of transport making taxis a concrete and specific category of transport services, and (2) those differences must have a decisive influence on the decision of the average user to use one such type of transport or the other.

By contrast, where pursuant to a special agreement, the aforementioned different characteristics between both types of services do not exist because the rates and conditions for using both services are identical, a different VAT treatment is not justified.

READ MORE *(click to open)*:

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [EL](#) [IT](#)

Judgment: [EN](#) (all EU languages available)

ECJ: Spanish tax on car fuel contrary to EU law – no limitation of temporal effects despite heavy fiscal impact

The European Court of Justice has found that the Spanish fuel tax IVMDH is contrary to the EU Excise Duty Directive, following the opinion of the Advocate-General of October 2013 (see [CFE European Tax & Professional Law Report October 2013](#)).

Moreover, the judges stated that Spain and the Autonomous Community Catalonia acted in bad faith introducing the tax and maintaining it for more than 10 years and that therefore, it is not justified to limit the temporal effects of the judgment which may cost the state € 13 billion.

The Court concludes that the governments must

have acted in bad faith as the ECJ had already ruled, in 2000, on a tax with analogous features to those of the IVMDH. Furthermore, in 2001, the Commission had informed the Spanish authorities that the introduction of such a tax would be contrary to EU law and had, in 2003, initiated an infringement procedure against Spain concerning that tax. The financial consequences for a Member State from a preliminary ruling do not in themselves justify limiting the temporal effects of that ruling. If it were otherwise, the most serious infringements would receive more lenient treatment inasmuch as it is those infringements that are liable to have the most significant financial implications for Member States. Furthermore, to limit the temporal effects of a judgment solely on the basis of such considerations would considerably diminish the judicial protection of the rights which taxpayers have under the fiscal legislation of the EU.

READ MORE *(click to open)*:

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [EL](#) [IT](#) [PT](#)

Judgment and Advocate-General Opinion: [EN](#) (all EU languages available)

EP supports EU standard VAT return

At its vote of 26 February 2014, the European Parliament expressed its support of a EU standard VAT return, proposed by the European Commission in October 2013 (see [CFE European Tax & Professional Law Report October 2013](#)). The EP which only has consultative powers in this dossier proposed only minor changes.

READ MORE *(click to open)*:

Text adopted (see Part I, p.27), provisional version: [EN](#) (all EU languages available)

Commission takes Luxembourg to Court over VAT rules for services supplied by a group to its members

On 20 February 2014, the European Commission has decided to take Luxembourg to the European Court of Justice concerning the country's VAT regime applicable to services supplied by a group to its members. Under the VAT Directive, some of these services are

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exempt from VAT to avoid making operations downstream more expensive for the group's members, given that the VAT cannot be deducted. This exemption is subject to strict conditions: in particular, the services provided by to the members must be directly required for their non-taxable or exempt activities.

Under Luxembourg law, the services provided by an independent group to its members are free of VAT provided that the members' taxed activities do not exceed 30% (or 45% under certain conditions) of their annual turnover. Group members are also allowed to deduct the VAT charged to the group on its purchases of goods and services from third parties. Lastly, operations by a member in his or her own name but on behalf of the group are regarded as outside the scope of VAT.

The Commission considers that the Luxembourg rule providing for a ceiling for taxed operations does not fulfil the above-mentioned condition. Moreover, group members should not be allowed to deduct VAT charged to the group.

READ MORE *(click to open)*:

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

Commission looks at how VAT collection and administrative cooperation can be improved

On 12 February 2014, the European Commission has adopted two reports on problems linked to VAT fraud, identifying possible remedies.

The first is a report on VAT collection and control procedures (COM(2014)69). With the aim to diminish the VAT gap, the Commission gives the following recommendations to member states (selection):

- Provision of better information on VAT identification, registration and deregistration in foreign languages;
- A post-registration monitoring programme for risky traders and fast-track deregistration of missing traders;
- Improvement of the data included in VIES;
- Concerning the exemption from import VAT for goods intended for another member state, VAT ID numbers of importers and customers should be che-

cked systematically and all information submitted domestically to the tax administration; other options would be licenses for risky traders;

- Ensuring a standard effective period for VAT refund and putting in place a systematic approach to non- or late filing of VAT returns, like automatic reminders and estimated assessments;
- Write-off procedures for uncollectable debts;
- More risk-based audit to replace obligatory annual audits;
- A compulsory independent administrative dispute resolution system;
- Compliance risk management encouraging voluntary compliance.

The second (COM(2014)71) is the first report on the application of the 2010 Regulation concerning administrative cooperation and combating fraud in VAT. It appears that administrative cooperation between member states in VAT is unsatisfactory and member states make insufficient use of the tools provided. Response to requests for information is too slow and feedback is seldom provided. Participation in administrative enquiries, joint audits or multilateral controls appears to be low. The Commission also proposes a coordinated EU approach to administrative cooperation with third countries. Urging the seriousness of the matter, the Commission has announced to issue a follow-up evaluation already by the end of 2015.

READ MORE *(click to open)*:

Report COM(2014)71: [All EU languages](#)

Report COM(2014)69: [All EU languages](#)

Šemeta indicates possible compromise areas on Financial Transaction Tax

EU Tax Commissioner Algirdas Šemeta held a speech at the European Parliament on 4 February 2014, indicating possible areas of compromise for a Financial Transaction Tax (FTT) through enhanced cooperation of 11 EU Member States.

Meanwhile, the Commission has published a note on the legality of the "counter-party principle", criticized for its allegedly impermissible extraterritorial effects, and an intervention of TaxUD Director-General Manfred Bergmann at a conference on legal aspects of the FTT.

INDIRECT TAX

The future of the FTT will also be discussed at the CFE Forum on 27 March 2014.

READ MORE *(click to open)*:

Speech of Commissioner Šemeta: [EN](#)

Commission note on counter party principle: [EN](#)

Legal aspects of the FTT, intervention by Manfred Bergmann: [DE](#), [EN](#), [FR](#)

Practical Guide to the VAT Mini One Stop shop now available in all EU languages + Russian

The practical guide to the VAT Mini One Stop Shops for telecommunication, broadcasting and electronic services, issued by the Commission in October 2013, has now been made available in all EU languages plus Chinese, Japanese and Russian. The rules on the VAT Mini One Stop Shop will apply as of 2015.

READ MORE *(click to open)*:

Speech of Commissioner Šemeta: [EN](#)

Commission note on counter party principle: [EN](#)

Legal aspects of the FTT, intervention by Manfred Bergmann: [DE](#), [EN](#), [FR](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD delivers new single global standard on automatic exchange of information

Responding to a mandate from G20 leaders to reinforce action against tax avoidance and evasion and inject greater trust and fairness into the international tax system, the OECD unveiled on 13 February 2014

a new single global standard for the automatic exchange of information between tax authorities worldwide.

The standard calls on jurisdictions to obtain information from their financial institutions and exchange that information automatically with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions that need to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. The OECD is expected to deliver a detailed Commentary on the new standard, as well as technical solutions to implement the actual information exchanges in September 2014.

READ MORE *(click to open)*:

Proposed standard : [EN](#)

OECD news release : [EN](#) (FR available)

US Inland Revenue publishes additional FATCA guidance

The United States' Inland Revenue Service published Regulations revising the final FATCA regulations and coordinating the payee identification, due diligence, information reporting, and withholding obligations of chapter 4 with those under chapters 3 and 61 and section 3406.

READ MORE *(click to open)*:

Revisions to the final FATCA regulations: [EN](#)

FATCA coordination regulations: [EN](#)

Information on [IRS website](#)

Commission proposes stronger cooperation with non-EU countries on VAT

On 6 February 2014, the Commission asked member states for a mandate to start negotiations with Russia and Norway on administrative cooperation agreements in VAT.

The goal of these agreements would be to establish

a framework of mutual assistance in combatting cross-border VAT fraud and in helping each country recover the VAT it is due. VAT fraud involving third-country operators is particularly a risk in the telecoms and e-services sectors.

The cooperation agreement would be based on the **Regulation** on administrative cooperation in the field of VAT, which currently sets the framework for intra-EU collaboration in this area. Among the ways in which Member States cooperate against VAT fraud are allowing each other access to their data bases, exchanging information (either automatically or on request) on taxpayers' activities, and the Eurofisc network to exchange information on VAT fraud.

The use of such instruments could be extended to third countries through cooperation agreements. The EU intends to negotiate such agreements with neighbouring countries, its main commercial partners and countries to be considered leaders in the field of electronically supplied services. For now, exploratory talks have been initiated with Norway, Russia, Canada, Turkey and China. Both Norway and Russia have already indicated that they are ready to start official negotiations.

READ MORE (click to open):

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

OTHER TAX POLICY

BEPS timetable update

On 20 February 2014, the OECD has updated its timetable indicating when it intends to deliver the next outcomes of its BEPS (base erosion and profit shifting) Action Plan and to hold the next public consultations. The revised timetable covers the period until May 2014.

READ MORE (click to open):

Updated timetable: [EN](#)

UN consults on BEPS issues for developing countries

The United Nations' Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries has provided an information note on some key points of the OECD/G20 Action Plan on BEPS as they may relate to developing countries. The note asks, in particular, for feedback on country experiences regarding such issues. Responses will serve for providing input into OECD and G20 work on such matters, as well as for informing and helping prioritise UN Tax Committee work on base erosion and profit shifting issues for developing countries. The deadline for responses is 18 April 2014.

READ MORE (click to open):

Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries: [EN](#)

PROCEDURAL LAW

CFE comments on "ne bis in idem" principle in tax law

The CFE has commented on the decision of the European Court of Justice in case C-617/10, Åkerberg Fransson, concerning "ne bis in idem" in tax law. This principle which is included in the EU Charter of Fundamental Rights and the Protocols to the European Convention of Human Rights contains a prohibition to punish an individual twice for the same criminal offence. In the case referred to the ECJ by a Swedish court, a fisherman had been ordered to pay a penalty (tax surcharge) for a tax offence and was later accused for the same offence in criminal proceedings. Applying a wide interpretation of the applicability of the EU Charter of Fundamental Rights, the ECJ provided criteria for the national judge to assess whether the tax penalty must be considered a criminal penalty, taking into account its legal classification, the nature of the offence and the nature and degree of severity of the penalty. The CFE statement which welcomes the Court's decision was prepared by the ECJ Task Force of the CFE.

READ MORE (click to open):

CFE Opinion Statement ECJ TF 1/2014: [EN](#)

STATE AID

EU Commissioners and OECD speak on state aid rules as a tool to fight harmful tax competition

On 11 February 2014, EU Tax Commissioner Šemeta, Competition Commissioner Almunia and OECD Secretary General Gurría emphasised, in their speeches at the European Commission's Competition Forum, the role state aid control can play in fighting harmful tax competition where soft law and EU tax legislation cannot provide solutions. The points mentioned include patent boxes and rulings by tax authorities.

READ MORE (click to open):

Competition Forum website (including speeches): [EN](#)

COMPANY LAW

Tax law excluded from European Foundation Statute

On 20 and 21 February 2014, the EU Competitiveness Council discussed about the proposal for a Regulation establishing the legal form of a European Foundation. After unanimity in the Council has proven impossible to achieve, in November last year, the Council's Permanent Representatives Committee (Coreper) agreed to have tax provisions deleted from the proposal. According to the Commission's idea, a European Foundation should enjoy the same tax treatment as domestic public benefit purposes entities in the state of its registered office; the same would apply for its donors and beneficiaries. Other member states than the state of the registered office should grant a European Foundation the same tax treatment they grant for their domestic public benefit purposes entities. Although the Commission regretted the deletion of tax treatment, this could pave the way for a renewed examination of the proposal.

READ MORE (click to open):

European Foundation proposal COM(2012)35 on Commission website: [EN](#) (DE, FR available)

ACCOUNTING

No country by country publication of tax payments in revised Accounting Directive

On 26 February 2014, the European Parliament and Council reached an agreement on extended annual publication duties of large EU undertakings, containing a list of corporate social responsibility criteria which however, does not include tax payments on a country by country basis. The Commission had proposed the review of the EU Accounting Directive in April 2013; members of the European Parliament, with the support of Commissioner Barnier, have sought in autumn 2013 to include the publication of tax payments. The EP's JURI Committee voted in December 2013 against publication of tax payments at this stage. According to the compromise reached and along with the proposition of the EP's rapporteur Raffaele Baldassarre (EPP, Italy), the Commission will only have to report by 2018 on this matter. The EP plenary (in April) and (shortly afterwards) the EU Council are likely to endorse this compromise (the text is not yet public) at their next meetings.

READ MORE (click to open):

Press release: [EN](#)

ANTI MONEY LAUNDERING

IMPRESSUM

EP Committees vote for public registers of beneficial owners but against extending AML duties to aggressive avoidance

On 20 February 2014, the ECON and LIBE Committees of the European Parliament voted on the proposal for a 4th Anti Money Laundering Directive. The MEPs favoured the introduction of public registers of ultimate beneficial owners of companies, foundations and trusts established in the EU. These registers have been the most contentious point in the negotiations and have caused two postponements of the vote. Proposals seeking to extend the scope of the reporting obligation to “aggressive tax avoidance” have not been taken on board, maintaining the principle that only criminal activity has to be reported. MEPs have however added, mostly in the recitals, references to the fight against tax fraud, evasion and tax avoidance. The CFE is strongly opposed to including aggressive tax avoidance in the AML Directive, as this would blur the distinction between legal and illegal tax behaviour, causing massive legal uncertainty for taxpayers and advisers. Provisions safeguarding legal privilege have been kept and even slightly extended. The EP plenary vote is scheduled for 11 March 2014. As the result of the ECON/LIBE vote already reflects a compromise, major changes in the plenary vote are unlikely. The EU Council vote on the dossier is still due.

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

Voted text: [EN](#) (all EU languages available)

EP press release: [EN](#)

CFE Opinion Statement PAC 1/2014: [EN](#)



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