European Tax Report
European Professional Law Report
November-December 2012 and January 2013

CFE EVENT

CFE Forum 2013: "Tax planning – What is (un)acceptable?"

On 21 March 2013, the CFE will host the its annual international tax conference in Brussels.

Governments, supported by the OECD and the EU, have identified "aggressive" tax planning or "tax arbitrage" as a major risk to the tax bases of countries.

Seemingly opposed to this view is the businesses´ perspective that planning is an integral part of business activity and, as tax is a cost to the business, tax planning is a legitimate business activity and is not necessarily aggressive.

The past decades have been witnessing a constant increase in the level of sophistication in the structuring of cross-border transactions. These arrangements, even if not set up with aggressive intention, pose significant challenges to tax authorities and policy makers who need to identify risk areas promptly and decide whether and how to counteract these.

Countries have developed a number of strategies to ensure timely, targeted and comprehensive information which traditional audits cannot provide, like complementary disclosure initiatives to fill the gap between the creation/promotion of tax planning schemes and their identification by tax authorities, arguing that this would benefit both taxpayers and governments alike, in terms of increased transparency and positive impact on tax compliance.

An important challenge for tax advisers is to ensure that such measures do not produce unintended and distortive effects on cross-border trade and investment. Although countries may choose how to design their tax systems, in a world where economies are increasingly integrated, it is essential to consider how tax systems interact, within a context of fair tax competition and an ever-increasing need for transparency on both sides.

The CFE Forum 2013 will address specific difficulties for practitioners involved in cross-border tax planning and point out practical solutions.

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

CFE website: **EN**

CFE PAC Conference: "Amnesty, Privilege, Disclosure: Managing critical issues in client relations"

On 7 December 2012, the CFE held its annual Tax Advisers´ Professional Affairs Conference; hosted by Deloitte in London. Starting with the recent OECD and EU initiatives against tax evasion, the conference dealt with ways to obtain amnesty for clients through tax evasion disclosure facilities, as well as legal privilege of tax advisers and lawyers and anti money laundering regulation. The speakers from the tax and legal professions and from tax administration demonstrated how these issues are becoming increasingly relevant not only for tax advisers who represent clients in criminal proceedings. A short report is available on the website of CFE´s German member organisation DStV. A more detailed article will appear shortly in European Taxation. All presentations are available on the CFE website.

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

Presentations: **EN**

Report on DStV website: **DE**

DIRECT TAX

ECJ: Equivalence of imputation method to exemption method in treatment of foreign-sourced dividends must not be undermined

On 13 November 2012, the ECJ delivered its decision in the case C-35/11, Test Claimants in the FII Group Litigation, stating that the application of the imputation method to foreign-sourced dividends as prescribed by the UK tax regime does not ensure a tax treatment equivalent to that resulting from application of the exemption method to nationally-sourced dividends. On the same occasion, the Court defines the scope of the Treaty provisions on the free movement of capital.

In the UK, when a resident company received nationally-sourced dividends it was not liable to corporation tax in respect of those dividends (exemption method). By contrast, when a resident company

received dividends from a non-resident company, it was liable to corporation tax on those dividends. It could nevertheless offset against that tax liability the tax that the company making the distribution had already paid in its country of residence on the profits thereby distributed (imputation method).

The UK High Court had requested the ECJ to provide clarification on its 2006 case law. The ECJ recalls that EU law in principle permits a member state to apply the exemption method to nationally-sourced dividends and the imputation method to foreign-sourced dividends. Those two methods may generally be considered equivalent. The Court points out, however, that that equivalence is capable of being undermined. Indeed, when nationally-sourced dividends were paid, they were exempt from corporation tax in the hands of the company receiving them, irrespective of the tax actually paid by the company making the distribution. By contrast, when foreign-sourced dividends were paid, the tax credit to which the company receiving the dividends was entitled pursuant to the imputation method was determined by taking account of the effective level of taxation of the profits in the state of origin.

Thus, in such a situation the exemption of the nationally-sourced dividends from tax gives rise to no tax liability for the resident company which receives those dividends irrespective of the effective level of taxation to which the profits out of which the dividends have been paid were subject. By contrast, application of the imputation method to foreign-sourced dividends leads to an additional tax liability so far as concerns the resident company receiving them if the effective level of taxation to which the profits of the company paying the dividends were subject falls short of the nominal rate of tax to which the profits of the resident company receiving the dividends are subject. Unlike the exemption method, the imputation method therefore does not enable the benefit of the corporation tax reductions granted at an earlier stage to the company paying dividends to be passed on to the corporate shareholder.

The Court nevertheless observes that the exemption and imputation methods do not immediately cease to be equivalent as soon as exceptional cases exist in which nationally-sourced dividends are exempt although the profits out of which those dividends have been paid have not been subject in their entirety to an effective level of taxation corresponding to the nominal rate of tax. However, according to the information supplied by the High Court, the effective level of taxation of the profits of companies resident in the UK is lower in the majority of cases than the nominal rate of tax applicable in that Member State. It follows that application of the imputation method to foreign-sourced dividends as prescribed by the legislation at issue does not ensure a tax treatment equivalent to that resulting from application of the exemption method to nationally-sourced dividends, and therefore the UK legislation must be regarded as a restriction on freedom of establishment and on capital movements that is prohibited by the Treaty on the Functioning of the EU.

In this context, the ECJ finds that the objective pursued by the national rules of preserving the cohesion of the national tax system could have been achieved by less restrictive measures. It points out that the tax exemption to which a resident company receiving nationally-sourced dividends is entitled is based on the assumption that the distributed profits were taxed at the nominal rate of tax in the hands of the company paying dividends. The exemption thus resembles grant of a tax credit calculated by reference to that nominal rate of tax and therefore the UK legislature, with a view to preserving the cohesion of the tax system, could also have taken account under the imputation method of the nominal rate of tax applicable to the company making the distribution and not of the tax that it had actually paid.

The referring court also wished to ascertain whether a company that is resident in a Member State and has a controlling shareholding in a company established in a third country may rely upon the Treaty provisions on the free movement of capital in order to call into question the consistency with EU law of the tax treatment which the legislation of that Member State accords to dividends received from such a subsidiary. According to the ECJ, in a context relating to the tax treatment of dividends originating in a third country it is sufficient to examine the purpose of the tax legislation at issue in order to determine whether that legislation falls within the scope of the Treaty provisions on the free movement of capital. Where it is apparent from the purpose of such national legislation that it can only apply to those shareholdings which enable the holder to exert a definite influence on the decisions of the company concerned and to determine its activities, neither the TFEU provisions on freedom of establishment nor those on the free movement of capital may be relied upon.

On the other hand, national rules relating to the tax treatment of dividends from a third country which, like the UK rules at issue, do not apply exclusively to situations in which the parent company exercises decisive influence over the company paying the dividends must be assessed in the light of the Treaty provisions on the free movement of capital. A company resident in a member state may therefore rely on those provisions in order to call into question the legality of such rules, irrespective of the size of its shareholding in the company paying dividends established in a third country.

DIRECT TAX

READ MORE *(click to open)*:

Press release : **EN** **FR** **DE** **EL** **ES** **IT** **PL**

Text of the Judgment (C-35/11): **EN** (all EU languages)

Car taxation: Commission issues recommendation to member states

On 14 December 2012, the European Commission presented a Communication to clarify the EU legal situation for passenger car taxes and identify best practices that Member States should implement. The aim is to minimize the problems encountered by citizens and businesses moving cars between Member States and to remove obstacles for cross-border rentals. According to the Commission, over 3 million cars are moved between Member States every year. Car registration taxes and circulation taxes are not harmonised in the EU which may result in double taxation and cause the fragmentation of the Single Market for passenger cars. The Commission has launched in total over 300 infringement procedures against Member States related to discrimination in national car registration rules and circulation taxes.

The recommendations include providing better information on the application of car taxes in cross-border situations refunding part of the registration tax for cars which are permanently transferred to another member state and including rules for the temporary use of vehicles, particularly rental cars, which are registered in another member state.

A Staff Working Document that accompanies the Communication gives an overview of the main legal issues that arise in the field of vehicle taxation and the level of protection available to EU citizens and businesses under EU law, including case law.

The Commission aims to use these discussions, and technical discussions with Member States, to give new momentum to its unsuccessful 2005 proposal on car taxation, aimed at abolishing registration taxes and replacing them with annual circulation taxes.

READ MORE *(click to open)*:

Press release: **EN** **FR** **DE** **LT**

Commission staff working paper : **EN**

November direct tax infringement package: Car registration tax in Greece, special retail and telecom taxes in Hungary and cross-border pensions in the Netherlands

On 21 November 2012, the European Commission has taken steps in direct tax-related infringement proceedings against Greece, Hungary and the Netherlands:

The Commission has formally requested Greece to change its registration tax rules for leased or rented vehicles. Under Greek law, if a customer residing in Greece leases or rents a vehicle from a lessor established in another member state, registration tax must be paid in full in Greece. However, according to European Court of Justice (ECJ) case law, Greece should only levy a tax proportionate to the duration of the vehicle‘s use. The Commission considers that this infringes the principle of free movement of services set down in the Treaties. The request takes the form of a reasoned opinion. If Greece does not comply with the request within two months, the Commission may decide to refer Greece to the ECJ.

Hungary has been formally requested to amend its legislation on the special taxes applied to the retail and the telecommunication sectors. The Commission considers these taxes to be discriminatory, as they fall disproportionately on non-Hungarian operators. Hungary imposes progressively increasing tax rates on all retail companies and on all telecommunication companies according to their annual turnover. Due to the design of these tax rates and the structure of the two markets, domestic companies are in practice given preferential treatment and the taxes are mainly borne by foreign-owned companies. The Commission considers that this infringes the freedom of establishment. Hungary is requested to change its legislation within two months to bring it in line with EU law (reasoned opinion, the second stage of an infringement procedure). Failing this, the European Commission may refer the cases to the ECJ. A separate infringement procedure against the special telecommunication tax, related to the EU Authorisation Directive, was referred to the EU‘s Court of Justice in March 2012 (Case C-462/12, see **CFE European Tax & Professional Law Report March/2012**).

The European Commission has formally requested the Netherlands to change three rules related to cross-border pension taxation: First, foreign pension service providers have to give guarantees to the Dutch authorities if they transfer pensions abroad or if they want to do business on the Dutch market. Second, employees have to give guarantees if their pensions are transferred abroad or if they want to buy pension services abroad. Third, transfers of pensions to foreign providers by workers employed outside the Netherlands are only exempt from tax if the taxpayer

provides a guarantee or if foreign providers assume the responsibility for any tax claims. None of these conditions have to be met by Dutch pension service providers in the Netherlands.

The Commission believes that these rules constitute restrictions to the free movement of citizens and workers, to the freedom of establishment, the freedom to provide services and the free movement of capital.

The Commission's request takes the form of a reasoned opinion. If there is no satisfactory reaction to the reasoned opinion within two months, the Commission may decide to refer the matter to the ECJ.

READ MORE *(click to open):*

Press release: **EN** (other EU languages available)

OECD meets with business on the discussion drafts on Intangibles, Safe Harbours and Timing Issues

On 12-14 November 2012, transfer pricing experts from governments met with private sector representatives to consider transfer pricing issues raised in discussion drafts on Intangibles, Safe Harbours and Timing Issues that were released for public comments in June 2012 (see **CFE European Tax & Professional Law Report June/2012**) and on which OECD received 134 position papers, including the two CFE Opinion Statements on Safe Harbours and Intangibles (see **CFE European Tax & Professional Law Report August-September/2012**).

The discussions focused on possible ways of simplifying transfer pricing compliance and enforcement, including the adoption of targeted safe harbour provisions; and approaches to clarifying transfer pricing rules for transactions involving intangibles, including rules aimed at limiting the opportunities for using transfers of intangibles for tax advantage by attributing income to parties that only hold the legal title to the intangible, without economically contributing to its development or maintenance.

The transfer pricing projects on intangibles and simplification are part of the broader OECD project on base erosion and profit shifting (BEPS).

READ MORE *(click to open):*

News release : **EN** **FR**

Session material

List of participants

Base erosion and profit shifting project

CFE publishes Transfer Pricing summary 2011/2012

On 8 November 2012, the CFE has published the summary of its 2011/2012 update of the Transfer Pricing survey, examining the implementation of the guidelines on transfer pricing documentation in 20 CFE countries. Also included is a list of recent transfer pricing case law of national courts, to be updated on a regular basis.

READ MORE *(click to open):*

CFE Transfer Pricing survey, summary and case law: **EN**

Commission asks Denmark to amend exit tax for individuals

On 23 January 2013, the European Commission has formally requested Denmark to amend its rules which apply an exit tax to shares held by individuals who take up residence in another country. In this case, the gain made on the person's portfolio of shares is calculated and taxed. This tax is then collected from the individual either when the shares from the portfolio are sold, or when dividends or other types of income from these shares are received. The Commission considers that the Danish tax rules go beyond what is needed to prevent tax evasion and breach the free movement of people and capital set out in the Treaties. Denmark is requested to change its legislation within two months to bring it in line with EU law. Failing this, the Commission may refer the case before the ECJ.

READ MORE *(click to open):*

Press release (January infringement package): **EN** (other EU languages available)

DIRECT TAX

Responses to consultation on venture capital investment published

On 3 August 2012, the European Commission invited public comments on tax problems linked to cross-border venture capital investment (see **CFE European Tax & Professional Law Report August-September/2012**). Responses received have now been made available on the Commission´s website.

READ MORE *(click to open)*:

Responses: **EN**

INDIRECT TAX

New VAT invoicing rules in force

The 2nd Directive on VAT invoicing providing for equal treatment of paper and electronic invoices came into force on 1 January 2013, meaning that member states will no longer be allowed to set pre-conditions for the use of electronic invoices, such as e-signatures, and invoices will be allowed to be electronically stored. The Directive also allows member states to offer a cash accounting option to small businesses with a turnover less than €2 million a year. These businesses would not have to pay VAT until it has been received by the customer, providing them with a cash flow advantage.

The second Directive on VAT invoicing was adopted in July 2010.

READ MORE *(click to open)*:

Explanatory notes: **link** (other EU languages)

Press release: **EN** **FR** **DE** **LT**

2nd VAT invoicing Directive 2010/45/EU: **EN** (all EU languages)

VAT on telecommunications, broadcasting and electronic services

On 18 December 2012, the European Commission adopted the proposal for an implementing regulation to ensure the smooth implementation of changes to the VAT regime for telecommunications, broadcasting and electronic services as of 1st January 2015.

In 2008, the VAT Directive was modified to take into account the development of e-commerce. At that time, to better ensure taxation at the place of consumption, it was agreed that, as of 1 January 2015, telecommunications, broadcasting and electronic services would be taxed at the place of the customer, i.e. at the place where the customer is established or resides, to establish a level playing field for all businesses in the sectors concerned. Suppliers of these services will be able to comply with their VAT obligations in the whole of the EU by submitting a single VAT return in the Member State in which they are identified. For the customer the VAT rate will be the same regardless of where his supplier is established.

The proposal will have to be adopted by the EU member states.

READ MORE *(click to open)*:

News release: **EN** **FR** **DE**

Green light from EP and Council for Financial Transaction Tax in 11 EU countries

The European Parliament (on 12 December 2012) and the EU Council (on 22 January 2013) gave their necessary approval to the introduction of a Financial Transaction Tax in 11 EU member states. These will be Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain. The European Commission is expected to come up with a formal new legislative proposal on 13 February 2013 with little but not fundamental changes to its original proposal of 28 September 2011. That proposal involved a harmonised minimum 0.1% tax rate for transactions in all types of financial instruments except derivatives (0.01% rate) (see **CFE European Tax Report 8/2011**).

The Parliament voted 533 votes in favour to 91 against, with 32 abstentions. The Council voted with qualified majority, with abstentions from the Czech Republic, Luxembourg, Malta and the United Kingdom.

INDIRECT TAX

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

Press release: **EN** (other languages available)

Press release, p.14: **link** (EN, FR)

Council adopts VAT derogations for Austria, Belgium, Germany, Latvia, Lithuania, Poland, Portugal and Slovenia

The Ecofin Council of 13 November 2012 adopted a decision authorising Germany and Austria to continue to exclude from the right of deduction the VAT borne on goods and services that are used by the taxable person for more than 90 % for private or non-business purposes. The aim of the measure is to simplify the procedure for charging and collecting VAT, thereby also preventing tax evasion and tax avoidance.

Lithuania was authorised to continue imposing VAT charges on the recipient of goods and services in the case of insolvency or restructuring procedures subject to judicial oversight and the supply of timber. Latvia was authorised on 22 January 2013 to introduce a reverse-charge mechanism for the supply of timber.

On 4 December 2012, the Council authorised Poland to continue exempting from VAT taxable persons whose annual turnover is no higher than the equivalent in national currency of € 30,000. On 22 January 2013, the Ecofin allowed Belgium to exempt from VAT taxable persons whose annual turnover is not higher than € 25,000; Slovenia, on the same day, has been allowed to apply a threshold of € 50,000.

Portugal was granted on 22 January 2013 an authorisation to apply a special optional regime for doorstep sales.

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

Press release of 13 November 2012 (p.23): **EN**

Press releases of 4 December 2012 (p.21): **EN**

Press release of 22 January 2013 (p.14 f.) : **EN**

Commission asks France to end VAT exemption on luxury yacht hire

The European Commission has formally requested that France remove the VAT exemption applied to the hire of yachts used for pleasure boating.

The VAT Directive provides for VAT exemption for certain transactions concerning vessels. However, this exemption does not apply to luxury boats used by individuals for recreational purposes. This has also been confirmed by the ECJ (case C-116/10).

The Commission request takes the form of a reasoned opinion. In the absence of a satisfactory response from France within two months, the Commission may refer the case to the ECJ.

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

Press release: **EN** (other EU languages available)

ECJ Spain must end application of reduced VAT rates to certain pharmaceutical products and medical equipment

On 17 January 2013, the ECJ has ruled in case C-360/11 that Spain´s application of reduced VAT rates to pharmaceutical products and medical equipment is contrary to the VAT Directive which defines possibilities for applying reduced rates more narrowly.This applies to (1) medicinal substances which can be used habitually and suitably in the production of medicine, (2) medical devices, material, equipment and appliances used only to prevent, diagnose, treat, alleviate or cure human or animal illnesses or ailments, (3) aids and equipment which may be used to treat physical disabilities in animals and (4) apparatus and accessories used essentially or primarily to alleviate physical disability in humans, but which are not intended for the exclusive personal use of the disabled.

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

Judgment and Advocate-General Opinion: **link** (all EU langugaes)

Press release: **EN** **FR** **DE** **EL** **ES** **IT**

INDIRECT TAX

OECD hosts First Global Forum on VAT

The OECD which hosted the Forum on 7 and 8 November 2012 in Paris sees a need for an international standard on the VAT-treatment of international trade, particularly in services and intangibles. The OECD is currently developing International VAT/GST (Goods and Services Taxes) Guidelines to address issues of double taxation and unintended double non-taxation, as a basis for the creation of the future international standard for applying VAT to cross-border trade.

The need for an international standard was a key conclusion of the more than ninety delegations that participated, with representatives of over eighty countries and international organisations. This conclusion was strongly supported by representatives of the business community and leading academics.

Over 150 countries operate a VAT today, twice as many as in 1992, and this number continues to grow. VAT now raises some 20% of the world's tax revenues. As countries around the world are facing similar questions on the design and operation of VAT, the OECD has launched its Global Forum on VAT as a platform for policy dialogue and consensus building around best practice principles, particularly in the context of international trade.

The Global VAT Forum looked at a range of design issues, notably considering how rising household income inequality may affect VAT policy and discussing options for improving VAT compliance. Country experts also exchanged views on countermeasures to reduce VAT losses due to fraud and, in this context, expressed a strong need for enhanced administrative co-operation, including through the exchange of information, building on OECD work in this area.

The key focus of the debate at the Global Forum was on the issue of double taxation and double non-taxation that results from the uncoordinated interaction of national VATs at international level. In contrast with the taxation of income (where there is the OECD Model Convention) there is beyond EU law harmonisation, no internationally agreed framework for the application of VAT to cross-border trade. This is especially problematic in the context of the strong growth in services and intangibles. Services cannot be subject to border controls in the same way as goods, so administrative procedures for ensuring that the right amount of tax is paid in the right place are more complex. From a government's viewpoint there is a risk of under-taxation and loss of revenue, or distorting trade through double taxation. From a business viewpoint, there are large revenue risks and high compliance costs.

The OECD is seeking to complete its VAT/GST Guidelines by 2014.

READ MORE *(click to open)*:

Conclusions : **EN** **FR**

Agenda: **EN**

Session Material: **EN**

CFE Opinion Statement on reduced VAT rates

The CFE Fiscal Committee has commented on the review of existing legislation on VAT reduced rates, carried out by the European Commission between October 2012 and January 2013 (see **CFE European Tax & Professional Law Report October/2012**).

READ MORE *(click to open)*:

CFE Opinion Statement: **EN**

CFE Opinion Statement on the proposed Directive on the fight against fraud to the EU´s financial interests by means of criminal law

In the explanation of its Directive proposal of 11 July 2012 (COM(2012)363 final), the Commission considers that for crimes affecting the EU budget, the level of protection and deterrence differs between member states due to diverging definitions and sanctions in national criminal laws. Apart from fraud, this relates to offences like corruption, money laundering and obstruction of public procurement procedures. The proposed Directive seeks to establish an effective protection and a uniform level of deterrence by providing definitions and minimum sanctions for fraud and other offences that may have repercussions on the EU budget. As a part of the VAT raised by Member States flows into the EU´s own resources, the Directive would affect criminal offences related to VAT. The Commission´s approach is questioned in the CFE Opinion Statement submitted on 24 January 2013.

READ MORE *(click to open)*:

CFE Opinion Statement: **EN**

INDIRECT TAX

Commission calls on Poland to amend VAT rates for medical equipment and pharmaceutical products

On 23 January 2013, the European Commission has formally requested Poland to amend its reduced VAT rate on medical equipment and pharmaceutical products. The Directive contains conditions for applying a reduced VAT rate for medical equipment, aids and other appliances and pharmaceutical products. According the Commission, these conditions are not met in the Polish case. The Commission's request takes the form of a reasoned opinion (second step of the EU infringement proceedings). In the absence of a satisfactory response within two months, the Commission may refer Poland to the ECJ.

READ MORE *(click to open):*

Press release (January infringement package):
EN **FR** **DE** (other EU languages available)

Commission publishes updated VAT rates

The European Commission has published its annual update on VAT rates in the EU. The comprehensive overview contains the different (full, reduced, super-reduced, zero and parking rates) VAT rates in force and cases where countries apply them as well as comparative tables for different product and service groups, geographical peculiarities and the evolution of VAT rates over the last decades.

READ MORE *(click to open):*

VAT rates overview: **EN** **FR** **DE**

Should the place of supply principle also apply to 2B2 supplies of goods?

A feasibility study carried out by PWC to examine the option of applying the current principle for the place of supply of B2B services to B2B supplies of goods (place of establishment of the customer), without following the physical flow of the goods within the EU, has been published by the European Commission on 24 January 2013.

READ MORE *(click to open):*

Study (zipped files): **EN**

OECD calls for better alignment of energy policy, public finances and environmental goals

On 28 January 2013, the OECD published two reports providing evidence of how reforming subsidies and tax breaks for fossil fuels and rationalising fuel taxes can help countries boost finances and meet green objectives.

A report titled "Taxing Energy Use" provides a comparative analysis of the structure and level of energy taxes in the 34 OECD member countries. It sets out how tax rates vary between different types of fuel and different uses of fuel for each country. The report calculates what statutory tax rates on these diverse fuels imply in terms of taxation per unit of energy and per unit of carbon dioxide (CO2) emissions. It shows the wide variations in these effective tax rates across countries, and details how rates also vary widely within countries between different types of fuel (diesel, natural gas, coal, etc.), even when they are used for similar purposes, which according to OECD, results in wide differences in the tax disincentives to emit, underlining the fragmentation in current international efforts to mitigate climate change.

Another report, the "Inventory of Estimated Budgetary Support and Tax Expenditures for Fossil Fuels 2013" collects details on more than 550 fossil fuel support measures in the 34 OECD member countries, including many provided by state and provincial governments. The report also highlights progress made and the benefits identified by a number of OECD countries in reforming support to fossil fuels in recent years.

READ MORE *(click to open):*

News release: **EN** **FR**

"Taxing Energy Use":
- Executive summary: **EN**
- Overview section: **EN**
- Links to country notes: **EN**
- Preview: **EN**

More links next page

OTHER TAX POLICY

READ MORE *(click to open):*

"Inventory of Estimated Budgetary Support and Tax Expenditures for Fossil Fuels 2013"

- Summary of the main findings: **EN**
- Links to country notes: **EN**
- Preview: **EN**

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

New EU administrative co-operation rules come into force

On 1 January 2013, the revised EU Directive on Administrative Cooperation in Taxation has come into force, laying the basis for stronger cooperation and greater information exchange between tax authorities in the EU. This relates to information that is of `foreseeable relevance` to the administration.

One of the main points is the abolition of bank secrecy for cross-border information requests: one member state cannot refuse to give information to another just because it is held by a financial institution. This aligns EU law to recognised international (OECD) standards.

Common procedures for exchange of information and harmonised forms are introduced to make the transmission of data between national authorities quicker and more efficient.

Tax officials may be authorised to participate in administrative enquiries in another member state. They will also be able to request that their tax documents and decisions are notified elsewhere in the EU.

Deadlines are introduced to accelerate procedures both for the exchange of information on request (reply within six months following receipt of request) and for spontaneous exchange of information (transmission of information no later than one month after it becomes available).

The Directive covers all taxpayers and all taxes except those already covered under specific EU legislation (i.e. VAT and excise duties) and compulsory social contributions.

The Directive also contains a most favoured nation clause: if a member state provides wider cooperation to a third country than that provided for under the directive it may not refuse such wider cooperation to another member state that requests it.

As of 2015, automatic exchange of information will be introduced for five categories of income and capital (income from employment, director's fees, life insurance products, pensions, ownership of and income from immovable property). The Directive also provides for a possible extension of this list to dividends, capital gains and royalties.

READ MORE *(click to open):*

Press release: **EN** **FR** **DE** **LT**

Related Commission website: **EN** **FR** **DE**

Directive 2011/16/EU: **EN** (all EU languages)

CUSTOMS

Guidelines for AEOs available in 21 languages

On 19 December 2012, the European Commission published the translations of its guidelines on authorised economic operators in the field of customs, published originally in April 2012 (see CFE European Tax & Professional Law Report 4/2012). Economic operators having been granted AEO status by an EU member state can benefit from certain simplified customs procedures throughout the EU.

READ MORE *(click to open):*

AEO guidelines: **link** (21 languages)

Information about AEOs: **EN**

STATE AID

Commission finds Italian real estate tax exemptions for non-commercial entities incompatible - amended exemptions cleared

The European Commission has found that the former Italian system of municipal real estate tax exemptions granted to non-commercial entities for specific purposes (ICI) between 2006 and 2011 was incompatible with EU state aid rules. After the Commission opened an in-depth investigation in October 2010, Italy amended the system and has now adopted a new municipal real estate tax law (IMU), which does not involve state aid since exemptions will only apply to premises where non-economic activities are carried out. The Commission has therefore closed its investigation.

The Commission does not order Italy to recover the aid from the beneficiaries because the Italian authorities have demonstrated that, in this specific case, recovery would be absolutely impossible.

READ MORE *(click to open):*

Press release of : **EN** **FR** **DE** **IT**

OTHER EU POLICY

Fiscal Compact Treaty in force

On 1 January 2013, the "Fiscal Compact" Treaty on Stability, Co-ordination and Governance, concluded in December 2011 between 25 EU member states (and, as a matter of fact, separate from EU law properly) to establish tougher fiscal discipline in the Eurozone came into force. The agreement needed ratification by 12 of the Eurozone's 17 countries before it could come into effect; ratification is still pending in the Benelux countries, Malta and Slovakia.

The Compact stipulates that countries must introduce laws obliging them to have a balanced budget. National budgets must be in balance or in surplus, a rule that is met if the annual government deficit does not exceed 0.5% of GDP. The balanced budget rule must be incorporated into the member states' national legal systems by 1 January 2014. The European Court of Justice will check whether the balanced budget rule has been transposed correctly and in time and can fine countries up to 0.1% of their GDP – payable to the Eurozone's rescue fund, the European Stability Mechanism. The granting of new financial assistance under the ESM is conditional on ratification of the Fiscal Compact and transposition of the balanced budget rule into national legislation.

The Fiscal Compact also contains provisions on the co-ordination and convergence of member states' economic policies and on governance of the euro area. It also includes the requirement for Eurozone summits to take place at least twice a year.

READ MORE *(click to open):*

Report: **EN**

Commission consults on cross-border transfers of registered offices of companies

On 12 December 2012, the European Commission unveiled a package of future legislative and non-legislative initiatives to modernise EU company law and corporate governance rules. EU company law should be merged into one legal instrument to ensure coherence of its rules. One suggestion in this action plan is possible EU legislation on cross-border transfers of registered offices of companies.

On the latter subject, the Commission has opened a public consultation on 14 January 2013. The Commission is looking for in-depth information on the costs currently faced by companies transferring their registered offices abroad and on the range of benefits that could be brought by EU action.

The questionnaire contains questions about the need for a legislative instrument at EU level, given the existing and expected case law of the ECJ, together with questions about its possible content and barriers that currently exist for companies that want to transfer their registered offices across borders.

Comments can be submitted until 16 April 2013.

READ MORE *(click to open):*

Press release : **EN** (all EU languages)

Communication COM(2012)740: **EN** (all EU languages)

Consultation website: **EN** **FR** **DE** (questionnaire and consultation paper: all EU languages)

OTHER EU POLICY

Commission publishes Annual Growth Survey 2013 containing recommendations on tax policy and criticising -once more- regulated professions

On 28 November 2012, the European Commission published its Annual Growth Survey in the context of its European Semester, containing recommendations dealing also with taxation. The recommendations made in the year before remain essentially unchanged: A tax shift from labour to consumption and property, broadening tax bases instead of raising tax rates, increasing environmental taxation, fighting evasion and removing the tax bias encouraging debt.

Concerning professional regulation, the Commission asks member states to review the necessity and proportionality of regulation of professional services, in particular fixed tariffs, limitations on company structures and capital ownership. The Commission believes that deregulation of professional services will create economic growth. This is further specified in a Report on the State of Single Market Integration, issued on the same day, naming also professional indemnity insurance requirements for temporary cross-border services.

READ MORE *(click to open):*

Annual Growth Survey COM(2012)750: **EN** (all EU languages)

Press release concerning taxation: **EN**

Report on the State of the Single Market Integration, COM(2012) 752, (p.9 f.): **EN** (all EU languages)

OTHER TAX POLICY

Commission presents action plan against fraud and evasion and recommendations on aggressive tax planning and tax havens

On 6 December 2012, the European Commission presented an "Action Plan" to fight tax evasion and fraud and aggressive tax planning, responsible, as the Commission believes, for one trillion of tax losses per year. Along with the Action Plan, two recommendations on aggressive tax planning and non-cooperative jurisdictions were released.

The Action Plan consists of 34 measures in various fields of taxation recently taken or to be taken by the Commission, the Council or EU member states, which can be grouped as follows:

Better implementation of existing EU legislation:

Implementation of the Directives and Regulation on mutual assistance and administrative cooperation adopted in 2010 and 2011 (Directives 2010/24/EU on mutual assistance in the recovery of claims, Directive 2011/16/EU on administrative cooperation, Regulation 904/2010/EU on administrative cooperation in VAT) (Point 1);

Adoption of EU legislation already proposed:

- Saving Tax Directive proposal of 2008 (Point 2);
- Conclusion of the agreement with Liechtenstein and mandate for opening negotiations with 4 European non-EU countries (Point 3);
- VAT quick reaction mechanism (Point 4);
- Optional application of VAT reverse charge mechanism (Point 5);

New EU legislation proposed:

- Regulation on standard forms for information requests to other member states (Point 12);
- Measures relating to diverging rules on denatured alcohol and resulting opportunities for fraud (Point 13);

Planned and possible future EU legislation:

- Revision of the Parent-Subsidiary-Directive to correct a technical error in the 2011 recast, concerning hybrid mismatches (Point 14);
- Negotiation mandate for bilateral agreements with non-EU countries on administrative cooperation in VAT (Point 20);
- Inclusion of the anti-abuse approach of the Recommendation on Aggressive Tax Planning (Point 8) in the Interest & Royalties-, Parent-Subsidiary- and Mergers Tax Directives (Point 15);
- EU-wide harmonisation of the criminal offence of money laundering and sanctions, in addition to the expected revision of the anti-money laundering (AML) Directive (Point 18);
- Introduction of EU-wide "tax identification numbers" on identity documents a.o. (Points 11, 22);
- Alignment of further criminal and administrative offences and corresponding sanctions (Point 30);
- Legal basis for joint tax audits of several member states, standard tax audit file and methodology for joint audits (Point 31, 32);
- Direct access to national databases in direct tax

OTHER TAX POLICY

(after evaluation the experience with VIES in VAT) (Point 33);
- after 2014: A single legal instrument for administrative cooperation for all taxes (Point 34);

Non-legislative instruments:

- Recommendation of common action of EU member states against tax havens including a definition of tax havens, the creation of national black lists and recommended action against non-compliant countries, cooperation and assistance for compliant developing countries (Point 7);
- Recommendation of a clause against aggressive tax planning to be included in future double tax conventions concluded by EU member states to ensure that profits are taxed in at least one state; member states should also include a general anti-abuse rule in their agreements (Point 8);
- Development of a European "Taxpayer´s Code" setting out best practices for improving cooperation and increasing transparency for taxpayers and administrations (Point 17);

Member states coordination:

- Call on member states to facilitate joint tax audits with foreign officials and to remove existing legal restrictions impeding their presence and participation (Point 19);
- Guidelines for member states for sharing of experience on tracing money flows (Point 24);
- Coordinated risk management techniques; structured information exchange between tax and customs authorities (Point 25);
- Extension of Eurofisc to direct taxation (Point 26)

Discussion forums:

- VAT Forum set up in 2012 (Point 6);
- New Platform for Tax Good Governance with experts from member states and stakeholders, assisting the Commission in its anti-aggressive-tax-planning initiatives (Point 9)
- Call for increased efforts to reach solutions in the Code of Conduct Group on harmful practices in business taxation (Point 10);

IT:

- Coordination with the OECD to achieve a wider use of the EU´s IT tools for exchange of information (Point 16);
- Development of computerised formats for automatic information exchange in areas other than VAT like employment income, directors´ fees, life insurance products, pensions, ownership of and income from immovable property and other (Point 21);
- Rationalisation of IT instruments in use and a possible EU-wide IT solution for administrative cooperation and information exchange (Point 24);

Service for taxpayers:

- Member states shall create tax one-stop-shops providing all necessary information for businesses and citizens, in particular in cross-border matters (Point 27);
- Encouraging member states to offer to taxpayers prefilled tax returns, voluntary disclosure programmes and the possibility to correct submitted data online, a.o. (Point 28);
- Improvement of the Commission´s tax web portal (Point 29).

Prior to the presentation of the Action Plan, the Ecofin Council of 13 November 2012 had expressed its support for the European Commission´s Communication of 27 June 2012 (COM(2012)351), anticipating the Action Plan. The Council however expressed reservation towards harmonised administrative and criminal sanctions and joint audits, saying they should not be taken forward as a priority at this stage.

READ MORE *(click to open):*

Press release (all EU languages): **EN**

Related Commission website: **EN FR DE**

"Action Plan" Communication COM(2012)722: **EN** (all EU languages)

Recommendation on aggressive tax planning: **all EU languages**

Recommendation on "measures intended to encourage third countries to apply minimum standards of good governance in tax matters": **all EU languages**

Questions and answers by the European Commission: **EN FR**

Council press release 13 November 2012: **EN** (p. 21)

Ecofin Council reports on legislative state of play in taxation

On 4 December 2012, the Ecofin Council adopted its biannual report on tax issues to the European Council, reflecting progress and standstill since July 2012. No significant progress is reported in the main legis-

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lative dossiers, namely the CCCTB, savings tax and energy taxation. In savings tax, the report describes the gridlocked negotiations: Austria and Luxembourg continue to block the adoption of the amended Directive, arguing that the adoption would put them at a competitive disadvantage to Switzerland, Andorra, Liechtenstein, Monaco and San Marino as these five countries apply a withholding tax instead of automatic exchange of information on savings income; as long as this remains unchanged, Austria and Luxembourg are currently allowed to apply a withholding tax as well. The Commission is therefore seeking to obtain negotiating mandates for savings tax agreements with the five aforementioned countries which in turn, Austria and Luxembourg block if the end of the transitional period is not re-negotiated.

The only apparent progress reported in the CCCTB (common consolidated corporate tax base) dossier is that in the three technical meetings, all elements of the Commission proposal of 16 March 2011 have been discussed but some member states continue to oppose basic elements of the proposal such as consolidation. Work at technical level will be continued.

As to the reform of the EU Energy Taxation Directive proposed in April 2011 with a view to aligning it closer with EU climate policy, the Cyprus presidency reported that it had presented four compromise proposals, the latest on 12 November. The Council invited the incoming Irish Presidency to continue work, taking as a starting point the latest compromise text.

Further pending legislation mentioned include the VAT proposals on vouchers, a quick reaction mechanism against fraud and an optional temporary reverse-charge mechanism for certain supplies of goods and services.

A success was achieved concerning the proposal for a mini-one-stop-shop in VAT for e-services, telecommunication and broadcasting which had been adopted by the Ecofin on 9 October 2012 (see **CFE European Tax & Professional Law Report October/2012**).

In tax policy coordination, the report mentions the discussion with the US administration on the implementation of US FATCA (Foreign Account Tax Compliance Act).

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

Report on tax issues: **EN**

Energy taxation report: **EN**

Irish presidency tax priorities

In the Ecofin Council of 22 January 2013, the Irish Council presidency represented its priorities in economic and financial matters. These include the adoption of the “two-pack” on economic governance and, in taxation, progress on the financial transaction tax, the CCCTB, the savings directive and associated negotiating mandates.

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

Press release (p.7) : **EN**

OECD publishes study on the equity implications of fiscal consolidation

On 16 January 2013, the OECD issued a study on the equity implications of fiscal consolidation. According to the study, there is scope to balance current consolidation efforts in favour of more equity with only limited adverse impact on potential growth. The study favours, among others, reducing tax expenditures and raising taxes on immovable property as well as increases in the effective retirement age and broadly-based consumption taxes. Increases in capital income taxes would also be equitable but need to be well designed to avoid being distortive.

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

Paper: **EN**

EVENTS

VAT in the public sector: European Commission hosts conference in Venice on 17-19 April 2013

On 30 January 2013, the European Commission has published an invitation to a conference on 17-19 April 2013 in Venice Mestre on “VAT in the public sector and exemptions in the public interest”. Invited are VAT directors and experts from EU member states´ tax administrations and a limited number of stakeholders. Registration is possible until 15 March 2013. The Commission has also published a “complementary study” on this issue carried out by Copenhagen Economics who had undertaken an initial study in 2011.

EVENTS

READ MORE *(click to open):*

Invitation : **EN**

Complementary Copenhagen Economics study : **EN**

Related studies: **EN**

PROFESSIONAL QUALIFICATIONS

EP IMCO Committee votes on modernisation of Professional Qualifications Directive

The responsible Internal Market and Consumer Protection (IMCO) Committee of the European Parliament has voted on 23 January 2013 on the proposal for a modernised Professional Qualifications Directive, presented by the European Commission in December 2011. The proposal includes the introduction of European Professional Card designed to facilitate cross-border mobility for professions in which such cards are introduced. Obtaining a card would be voluntary for professionals.

The decision on the introduction of Professional Cards for a given profession would be taken by the European Commission, with no veto of other European institutions, member states or professional organisations. Attempts to introduce a co-decision have not been favoured by the IMCO.

In professions for which Professional Cards will be introduced, in a situation where a professional seeks to practice permanently in another member state where the profession is regulated, there would be a tacit authorisation if the host country´s competent authority fails to take a decision on the validation of the applicant´s Professional Card in a given timeframe. This has been criticised, among others, by CFE for ignoring the client´s interest in being protected from unqualified practitioners. The adopted version leaves however some uncertainty as to whether a professional, having benefited from tacit authorisation, may start practicing or not.

The IMCO favoured including the possibility of partial access to a regulated profession in the Directive, as proposed by the Commission. So far, such possibility has only been recognised by the ECJ. The wording of the current proposal would even lead to a broadening of the possibility for partial access, compared to the ECJ case law (case C-330/03, Colegio de Ingenieros de Caminos).

Like the current Professional Qualifications Directive, the IMCO text includes a definition of "liberal professions". The IMCO also voted to extend the Directive to non-paid traineeships, contrary to the Commission´s proposal which included only paid traineeships.

The resolution was adopted by 33 votes to 4, with 2 abstentions. The plenary vote is currently scheduled for 11 June 2013.

READ MORE *(click to open):*

Press release: **EN**

ANTI MONEY LAUNDERING

French anti money laundering rules compatible with European Convention of Human Rights

On 6 December 2012, the European Court of Human Rights (ECHR) has ruled in the case Michaud that the French implementation of the reporting obligation for indications for money laundering contained in the EU Anti Money Laundering Directive is not contrary to the right to privacy as enshrined in Art.8 of the European Convention of Human Rights. As the reporting obligation does not apply where the lawyer represents the client in judicial proceedings, the ECHR does not see a violation of the lawyer´s legal privilege. Member states may exempt lawyers and tax advisers from the reporting obligation where they give legal advice to clients or represent them in judicial proceedings. They may also provide that tax advisers, auditor and lawyers report the case to their self-regulating professional bodies instead of the Financial Intelligence Unit set up by the state. When member states make use of these exemptions, the Court notes that they may also allow the respective professional bodies to filter the cases reported for relevance before passing on the information to the Financial Intelligence Units.

READ MORE *(click to open):*

ECHR judgment: **EN** **FR**

IMPRESSUM

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