European Tax Report
European Professional Law Report
April 2012

DIRECT TAX

European Commission approves German and UK bilateral savings tax deals with Switzerland

On 17 April 2012, the European Commission confirmed that the bilateral savings tax deals concluded by Germany and the UK with Switzerland are in compliance with EU law. The green light was given after amendments to these agreements had been made and only six weeks after Commissioner Algirdas Šemeta had objected the bilateral agreements in a letter to the Council. However, no visible progress has been made in the EU Council on an overhaul of the Savings Tax Directive introducing automatic change of information. A bilateral agreement between Switzerland and Austria is still under scrutiny by the Commission.

Commission to examine tax measures for cross-border workers

On 2 April 2012, the European Commission has announced that in the course of this year, it will carry out a thorough assessment of national direct taxes to determine whether they create unfair disadvantages for workers that live in one member state and work in another. The Commission estimates that these are 1.2 million people in the EU. National governments shall be asked to end discriminations and other unjustified restrictions. Issues scrutinised include whether citizens who earn most of their income in another member state enjoy all the personal and family deductions available to residents and whether member states grant to citizens from other member states who occasionally work in their territory the same right to deduct expenses and apply the same tax rates. In essence, this initiative seeks to ensure that the existing legal situation as defined by the European Court of Justice in judgments like Schumacker (C-279/93), Wielockx (C-80/94), Turpeinen (C-520/04) and Gerritse (C-234/01) is properly respected by member states.

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

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

Commission requests Belgium to end discrimination in inheritance taxes and in tax credits on business profits

On 26 April 2012, the European Commission formally requested Belgium to remove discriminatory provisions on inheritance taxation and company taxation.

Inheritance tax:

Brussels and Walloon regional legislation on inheritance taxes provides a choice between several share prices to determine the taxable base for inheritance tax purposes. This however only applies to shares listed on the Belgian stock exchange. Conversely, shares listed on stock exchanges outside Belgium can only be valued at their foreign stock market value on the date of the death without any possible choice between prices which may result in higher taxation of shares listed outside Belgium. The Commission considers that excluding the shares listed on other EU and EEA stock exchanges from this choice is discriminatory and constitutes an unjustified restriction on the free movement of capital.

Company tax

The Belgian legislation grants a tax credit on business profits of up to a maximum of 3,750 € per year. This is equal to 10% of the highest of the last three fiscal years‘ positive difference between the end-of-year fiscal value of the fixed assets and the total amount of the outstanding long-term debt of the company. Non-residents earning profits via a Belgium permanent establishment are excluded from this tax credit which may result in foreign businesses earning profits in Belgium through a permanent establishment being taxed more than Belgian businesses. The Commission is of the opinion that this exclusion is discriminatory and constitutes an unjustified restriction on the freedom of establishment.

The Commission does not see any possible justification for either of these discriminations. The Commission‘s requests take the form of reasoned opinions (second step of EU infringement proceedings). In each case, in the absence of a satisfactory response within two months, the Commission may refer Belgium to the Court of Justice of the European Union.

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

Press release: **EN** **FR** **DE** **NL**

DIRECT TAX

Registration tax for borrowed cars from another member state must be calculated according to duration of use

On 26 April 2012, the European Court of Justice decided in cases C-578 to 580/10 on the cases of three Dutch residents that were heavily fined by the Dutch tax authorities for driving cars registered in Belgium and Germany in the Netherlands; these cars were borrowed (free of charge) from friends or family in Belgium and Germany. Dutch authorities had taken the view that the drivers had been avoiding the Dutch vehicle registration tax. The Dutch Supreme Court Hoge Raad in the appeals proceeding asked the ECJ whether the Dutch tax rule was contrary to EU law as it did not take into account the duration of the use. According to the ECJ´s response, the Netherlands are free to impose a tax on cars registered in other member states and borrowed to Dutch residents only if they are intended to be used (or actually used) on a permanent basis in the Netherlands.

READ MORE *(click to open)*:

Press release: **EN**

Judgment: **EN** (all EU languages)

EP wants CCCTB to apply to all companies but small and medium-sized

On 19 April 2012, the plenary of the European Parliament has delivered its opinion on the CCCTB (Common Consolidated Corporate Tax Base) proposal, along the lines of the ECON Committee´s vote, delivered four weeks earlier, see **European Tax & Professional Law Report March 2012**. The Parliament would like the tax base to be mandatory for all European company forms and cooperative societies after two years and for all companies except for SMEs and micro-entities another three years later. Such change would do away with the principle of optionality which has been stressed as essential element by CFE and many other experts. The opinion of the EP however will not be binding for the Council. Besides, a revised CCCTB proposal by the European Commission is expected in the near future.

READ MORE *(click to open)*:

EP resolution (all EU languages): **EN**

Taxes on labour and social contributions in OECD continue to rise

The average tax and social security burden on employment incomes increased in 26 out of 34 OECD countries in 2011 according to the new OECD Taxing Wages publication. Taxpayers in Ireland, Luxembourg, Portugal and Slovakia were among those hit with the largest increases. In Hungary, the average single worker without children was faced with the largest increase in the tax wedge, but for families with children, it fell.

In most countries the higher overall tax burden was due to personal income tax, rather than increased social security contributions. Only 5 countries raised their statutory tax rates on average earnings. In most cases the rise in the tax burden was due to reductions of tax free allowances and tax credits.

The tax burden is measured by the ‘tax wedge as a percentage of total labour costs’ – or the total taxes paid by employees and employers, minus family benefits received, divided by the total labour costs of the employer. Taxing Wages also breaks down the tax burden between personal income taxes (PIT), including tax credits, and employee and employer social security contributions (SSC).

The differences between the tax wedge for families with children compared to that for single individuals without children are particularly large in the Czech Republic, Luxembourg, Belgium, Germany, Hungary, Ireland, New Zealand and Slovenia.

On average the top rate including personal income tax and social security contribution fell by 4 percentage points, from 49.4% in 2000 to 45.4% in 2010.

READ MORE *(click to open)*:

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

Country-by-country information: **EN**

INDIRECT TAX

EP ECON Committee votes for Financial Transactions Tax

On 25 April 2012, the European Parliament´s ECON (economic and monetary affairs) Committee voted in favour of the European Commission´s proposal of 28 September 2011 for a Financial Transactions Tax (FTT). The Parliament´s opinion will only be consultative. As the Netherlands, Sweden and the UK are

INDIRECT TAX

known to be strictly against the proposal, the only possibility for a FTT would be through enhanced co-operation of a limited number of EU member states.

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

Text voted in ECON: **EN** (several languages)

EP plenary gives opinion on Energy Tax Directive

In its non-binding plenary resolution, the European Parliament on 19 April 2012 generally supported the European Commission´s proposed revision of the Energy Tax Directive but suggested a number of changes in favour of certain sectors. For instance, the Parliament voted against ending the preferential tax treatment of diesel fuel or of energy used in the agricultural sector. There should also be a possibility for member states to tax energy used for the recharging of electric or hybrid cars at a lower rate. In contrast, Exemptions or reductions benefiting households and charitable organisations should be abolished and any social objectives pursued by other means than energy taxation. The Commission is proposing to extend such possible exemptions or reductions to all forms of energy or heating fuel.

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

EP resolution (all EU languages): **EN**

European Commission asks Bulgaria to apply VAT to the activities of state bailiffs

On 26 April 2012, the European Commission has formally asked Bulgaria to apply VAT to the activities of public bailiffs. In Bulgaria there are state bailiffs who are on the staff of the regional courts and private bailiffs who operate independently. According to national law, only the activities of private bailiffs are subject to VAT. The Commission considers that this situation is incompatible with EU law on VAT, which rules that public bodies should be subject to VAT for the activities in which they engage as public authorities where treatment as non-taxable persons would lead to significant distortions of competition. The request takes the form of a reasoned opinion (the second stage of an infringement procedure). If the rules are not brought into compliance within two months, the Commission may refer the matter to the European Court of Justice.

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

Press release: **EN** **FR** **DE** **BG**

Commission requests Spain to modify its rules on excise duties

On 26 April 2012, the European Commission has formally requested Spain to modify its rules on excise duties to bring them into line with EU legislation. Under EU rules, all movement of excise goods under duty suspension within the EU must be accompanied by an electronic administrative document giving details about the goods, including information about their journey time. A movement of excise goods can refer for example to moving goods from a tax warehouse in one Member State to a tax warehouse in another Member State. Duty suspension is a temporary exclusion from paying excise duties. Goods that have not been submitted to excise duties yet have to remain in an authorised „tax“ warehouse for fiscal reasons. One of the elements in the electronic administrative document is the „journey time“. This entails that the operator must provide in the document the normal period of time necessary for the transport of the excise goods so that the authorities‘ attention will be drawn to excessive travel times or travel times which exceed the estimated ones, as a situation in which the risk of fraud and evasion could be higher than otherwise. If the estimated journey time is exceeded, the Excise Movement Control System (EMCS) will inform the excise authorities at dispatch and destination to enable them to start investigations.

The Spanish rules impose a 10 % penalty on the excise duties of goods and a minimum fine of 600 euros if:

• the time estimated by the operator for the transport of the excise goods is shorter than the time ultimately employed;

• the time difference is discovered by the tax authorities during the movement of the excise goods;

The Commission finds that these rules are disproportionate as they are unsuitable to detect fraudsters who tend to indicate longer rather than shorter travel times.

INDIRECT TAX

The Commission has officially asked Spain to amend its legislation within two months. In the absence of a satisfactory response, the Commission may refer Spain to the EU Court of Justice.

READ MORE *(click to open):*

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

Council adopts Regulation on Administrative Cooperation in Excise Duties

On 2 May 2012, the Ecofin Council adopted the Regulation on Administrative Cooperation in the Field of Excise Duties. The Regulation will facilitate the implementation of the electronic Excise Movement and Control System (EMCS) introduced in April 2010.

READ MORE *(click to open):*

Regulation proposal COM(2011)730: **EN** (all EU languages)

Commission press release on regulation proposal: **EN** **FR** **DE** **LT**

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD Global Forum publishes new country peer reviews

On 5 April 2012, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes completed peer reviews of another 11 jurisdictions: These are **Brazil**, **Chile**, **Costa Rica**, **Cyprus**, the **Czech Republic**, **Guatemala**, **Malta**, **Mexico**, **Saint Vincent and the Grenadines** and the **Slovak Republic**. The reports, so-called phase 1 reports, seek to evaluate whether national laws allow transparency and international exchange of tax information. A phase 1 and phase 2 review, covering also the effectiveness of the exchange of information in practice, was made for **Korea** while supplementary reports for **Barbados**, **Bermuda** and **Qatar** were published assessing whether these jurisdictions have acted upon the Forum's earlier recommendations for improvement. The total number of peer reviews completed by the Global Forum since March 2010 is now 70.

READ MORE *(click to open):*

OECD News Release (including summaries of country reports): **EN** **FR**

ACCOUNTING

Equivalence of foreign accounting standards with IFRS

On 13 April 2012, the EU Official Journal published two delegated regulations and one implementing decision prolonging the equivalence mechanism in relation to third-country Generally Accepted Accounting Principles (GAAP). Through this mechanism, GAAP of countries not (yet) using the International Financial Reporting Standards (IFRS) for listed companies are declared equivalent to IFRS, enabling companies from these countries listed in EU markets to comply with EU law requirements. The equivalence will apply retroactively as of 1 January 2012.

READ MORE *(click to open):*

Decision 2012/194: **EN** (all EU languages)

Regulations (EU)310/2012: **EN** and (EU)311/2012: **EN** (all EU languages)

Press release (see heading "Accounting"): **EN**

OTHER TAX POLICY

EP reiterates its call to combat tax fraud and evasion

The European Parliament, in its non-legislative resolution of 19 April 2012, called for more coordination of member states in tax policies, better administrative

OTHER TAX POLICY

cooperation and legislative progress at EU level to fight tax fraud and evasion, referring to its previous opinions on a number of recent tax dossiers like the CCCTB, the Parent-Subsidiary-Directive, the proposal for a revised Accounting Directive including country-by-country reporting of tax payments and the ongoing work on the revision of the Savings Tax Directive.

READ MORE *(click to open):*

EP resolution: **EN** (all EU languages)

CFE EVENTS

CFE Forum 2012: Tax law in the light of judgments - the interaction of European law and the national courts

This year´s CFE Forum on 19 April attracted approximately 110 participants, mostly tax advisers and tax lawyers from CFE member states but also a number of officials from the European Commission, the EU Council and national administrations. The morning session addressed problems related to the preliminary ruling procedure (Art. 267 TFEU). Among these were the questions to what extent the "acte clair" doctrine of the European Court of Justice (ECJ) hinders the development of EU law, particularly in taxation and which alternative ways tax advisers or lawyers could take to obtain a ruling from the ECJ if a national court of last instance (Art. 267 (3) TFEU) refuses to refer a case to the ECJ. The topics were lively discussed between speakers Ekkehart Reimer (professor, University of Heidelberg), judge Barbara Pořízková (judge, Czech Supreme Administrative Court) and Sir Stephen Oliver (former judge and President of the Tax Chamber of the first-tier Tribunal, UK), moderator Stella Raventos-Calvo (Chair of the CFE ECJ Task Force) and the audience. The afternoon session dealt with taxes and the concept of internal market. CFE Fiscal Committee Chairman Gottfried Schellmann made clear that the Internal Market concept in taxation and other fields such as state aid can be different, leading to very different results. Michael Tumpel (professor, University of Linz) dealt with fundamental freedoms and VAT law while Herman von Kesteren (PwC, the Netherlands) examined the relationship between the EU Treaty, the VAT Directive and Regulation and national law and how to deal with possible inconsistencies of these legal acts, highlighting also how state aid rules law may come into play. The afternoon session was moderated by Petra Pospíšilová (CFE Fiscal Committee). All presentations and two reports about the Forum by IBFD and Tax Analysts are available on the related CFE website.

READ MORE *(click to open):*

Related CFE website: **EN**

CROSS-BORDER SERVICES

Switzerland reintroduces quotas on Central and Eastern European workers

On 18 April 2012, Switzerland announced that as of 1 May 2012, it would temporarily reintroduce an authorisation scheme applying quotas for workers from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. The authorisation requirements had been abolished on 1 May 2011. The reintroduced authorisation rules will be in force for one year.

READ MORE *(click to open):*

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

ANTI MONEY LAUNDERING

Commission announces changes to Anti Money Laundering Directive

On 11 April 2012, the European Commission issued a report on the application of the current 3rd Anti Money Laundering (AML) Directive 2005/60/EC. A revised AML Directive would be proposed in autumn 2012. The report considers that the approach taken on the involvement of legal professionals (lawyers or, as the case may be, tax advisers) in the fight against money laundering does not require a change meaning that member states could continue to exempt legal advisers from reporting obligations in the course

ANTI MONEY LAUNDERING

of ascertaining the legal position of the client or when defending or representing them in judicial proceedings. The report also mentions that there has been uncertainty among lawyers and other legal professionals as to the scope of this exemption. The Commission has asked stakeholders to submit opinions until 13 June 2012.

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

Press release: **EN FR DE**

Report COM(2012)168: **EN FR DE BG CS DA ET EL ES IT LV LT HU MT NL PL PT RO SK SL FI SV**

IMPRESSUM

Confédération Fiscale Européenne
-The European Federation of Tax Advisers-
188A, Av. de Tervuren
B-1150 Brussels

Editor: Rudolf Reibel, LL.M., CFE Fiscal and Professional Affairs Officer

If you have any suggestions or questions, please feel free to contact the editor:
brusselsoffice@cfe-eutax.org

Layout: Laëtitia Bois, Administrative Assistant