European Tax Report
Confédération Fiscale Européenne (CFE)

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NEWS - INDIRECT TAX

COUNCIL OF THE EUROPEAN UNION

Economic and Financial Affairs

Luxembourg blocks VAT package

What do the well-known media companies AOL, Skype and Amazon have in common? All of them have their seat in Luxembourg to profit from the exceptional low VAT rate of 15%, which is the lowest level a Member State is allowed to apply within the EU. The three companies are part of the reason why Luxembourg is still rejecting the new VAT package – against the views of almost all other 26 Member States. The reform aims to shift the application of VAT for B2C services from the country of a service supplier to the country of consumption. Skype, AOL and other telecom companies would have to apply e.g. French VAT rates for services which they deliver to citizens in France regardless where their seat is established.

A loss of €200 million

According to reports in Luxembourg, this would lead to a loss of 1% of the national budget which is around €200 million. "No finance minister would give up one percent of his gross domestic product to make others happy," underlined Luxembourg's Finance (and Prime) Minister Jean-Claude Juncker. Portuguese Finance Minister Fernando Teixeira Dos Santos stated after the meeting that he noted broad support for the proposal on a political level as 19 national delegates expressed its support for the proposal. The work will be continued on a technical level and put on the agenda for the ECOFIN meeting in December.

VAT package

Other items included in the VAT package are the introduction of a one-stop-shop for tax declarations, the taxation of services supplied to businesses (B2B) and details of how VAT is to be refunded for people liable to VAT in one Member State but established in another.

Taxation of private car ownership

For the first time the 27 Finance Ministers of the EU discussed the draft directive on harmonising taxation on private cars. The Portuguese Presidency suggested to keeping the registration charges for cars, setting up a compensation system for when cars are in a new Member State and allowing private car ownership taxation to take account of environmental concerns.

No EU competence

Portuguese Finance Minister Fernando Teixeira Dos Santos expressed after the meeting that there had been „broad convergence among Member States in favour of the proposal" but a number of Member States fear that the EU does not have the power to legislation in this field.

Infringement proceedings for car taxation

According to statistics published by Directorate General of Taxation and Customs Union, the European Commission opened eight infringement proceedings in the field of taxation of private cars in the period from 2005 to 2007.

Reduced rates on VAT

As last item on the ECOFIN agenda, the reduced rates on VAT were discussed but the negotiations could not be finalised. Currently five of the new Member States (Cyprus, Malta, Poland, Czech Republic and Slovenia) are allowed to apply reduced rates on VAT in certain areas for a transitional period until 2008. The European Commission came up with a proposal to extend the derogations until 2010 which would give the EU Finance Ministers more time to overhaul the EU system of reduced VAT in general.

Areas where the reduced rates are applied

Reduced VAT rates apply to the supply of building work on private housing (5% VAT rate) in Czech

Republic and Slovenia, renovation (5-7% VAT rate) in Cyprus and Poland and exemption for food and pharmaceuticals in Malta. Germany expressed its reservation for an extension of the reduced rates as the political debate on rationalising the entire EU VAT system should not be prejudged.

Continued discussion in December

The ECOFIN held in December will continue its political debate on simplifying the system of reduced VAT rates by also taking into account the possibility

Read more (click to open):

Press Release by ECOFIN

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MEMO on Communication on VAT reduced rates by the European Commission

EN **FR** **DE**

Communication 2007 (380) by the European Commission on VAT rates other than standards VAT rates

EN **FR** **DE**

EUROPEAN COMMISSION

Amendments to VAT Directive

The European Commission has published a draft directive amending Directive 2006/112/EC on the VAT system as the technical terms used in the directive do not longer correspond to economy realities in particular where VAT is levied on the supply of natural gas and the VAT exemption for natural gas imports.

According to the European Commission none of the amendments calls into question the guiding principles set out in VAT Directive. The modifications include the application of the same tax rules to the supply of heating or cooling by heat or cooling networks as apply to natural gas and electricity industries, application of tax exemptions foreseen for international organisations to the common enterprises set up by the EU under EU R&D programmes which do not have a common activity and inclusion of the derogations negotiated by Bulgaria and Romania in the VAT directive and the adaption of the right to reduced-rate VAT for professional and private mixed-use real estate.

Read more (click to open):

Proposal for a Council Directive amending VAT Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

EN **FR** **DE**

EUROPEAN PARLIAMENT

Fight against AIDS – Reduced VAT on condoms

The Socialist Group at the European Parliament launched an online-campaign and petition to call for reduced VAT rats on condoms in order to fight AIDS epidemic in Europe. “Reducing VAT on condoms to the lowest possible level would be both a practical step in tackling AIDS and a powerful symbolic gesture on World Aids Day”, Jan Marinus Wiersma (PES, the Netherlands) explained.

From 25% to 5%

Currently there is a wide range of rates within the EU, from up to 25% in Sweden and Denmark to the lowest possible rate of 5% in the United Kingdom. EU Member States are free to set up their own rates as long as they do not go below 5%.

Read more (click to open):

Online Petition for lower VAT on condomes launched by the PES

EN FR DE

Press Release on VAT on condoms by PES

EN FR DE

NEWS - DIRECT TAX

EUROPEAN COMMISSION

Personal / family allowances in Spain

Under Spanish tax law a person resident in a Member State outside Spain cannot benefit from any personal or family allowances when he or she works in a Spanish diplomacy or consular office. The European Commission considers this legislation as contrary to the right of free movement of persons (Art 39 and 40 of the EC Treaty) as Spanish residents who leave to country to work abroad in a diplomatic mission are entitled to benefit from these allowances.

Letter of reasoned opinion

The European Commission sent a letter of reasoned opinion which is the second step of the infringement procedure provided for in Article 226 of the EC Treaty. If Spain does not reply satisfactorily within two months, the European Commission may refer the matter to the European Court of Justice.

Read more (click to open):

Press Release on discriminatory tax rules applied to non-residents recruited to work in Spanish diplomatic or consular offices

EN FR DE

Infringement proceeding on foreign pension funds

In February 2003 the European Commission formally requested Belgium, Portugal, Spain and France to amend their tax legislation in accordance with the Communication on the elimination of tax obstacles to the cross-border provision of occupational pensions in April 2001.

Europe-wide tax discrimination

In many EU Member States recipients of foreign pension funds face higher taxation because EU States limit the deductibility of taxes or levy special taxes which results in a less favourable treatment of foreign pension funds compared to domestic pension funds. Further companies which operate in several Member States have to deal with different pension schemes as a centralisation of the pension arrangements into one single scheme for all their employees throughout the European Union may result in discrimination due the different treatment of foreign pension funds. The European Commission closed the infringement proceedings in the beginning of November for Belgium.

Read more (click to open):

Press release on pension funds (published December 2003)

EN FR DE

Discriminatory taxation for houses outside Belgium

Infringement proceeding closed

Under Belgian law tax relief is allowed only for owner-occupied and secondary houses which are located in Belgium whereas a person who is resident in another Member State may not benefit from this tax relief. The European Court of Justice had ruled more than 10 years ago in the Schumacker Case (C-279/93, 14 February 1995) that such a legislation constitutes an infringement against the free movement of workers (Art 39 of the EC Treaty). For self-employed persons this treatment is further not in line with the freedom of establishment.

The European Commission sent a formal request in the form of a reasoned opinion under Article 226 of the EC Treaty in January 2007. On beginning of November the European Commission closed the infringement proceeding.

Read more (click to open):

Press release on pension funds (published January 2007)

EN FR DE

NEWS - OTHER

EUROPEAN COMMISSION

State aid: Belgian coordination centres

The Belgium law has prolonged the period of transition which was grated to Belgian coordination centers to adapt to changes in the tax system from 31 December 2005 to the end of 2010 which the European Commission considers as incompatible with the Internal Market.

Transition period granted until 2003

“The Commission has granted Belgium the period of transition that it desired in 2003 and from which companies concerned have in fact benefited. It would not, however, have been reasonable to authorise all centres to benefit until the end of 2010 from a system that ceased to be compatible in 2003”, commented Neelie Kroes, Commissioner for Competition.

ECJ partly overruled decision from the EU Commissio

On 22 June 2006 the European Court of Justice partly overruled the decision of the European Commission taken in February 2003 by confirming that the Belgian coordination must have a certain period for adaption to respect the principle of legitimate expectation. Under the 2003 decision, certain centres were allowed to extend the transition period until 2010 which also violated the principle of equality from the point of view of the European Court of Justice.

Contrary views on lenght of transition period

The Belgium State today argues that – based on these principles – it was entitled to extend the adaption period until the end of 2010 whereas the European Commission rejects these arguments as in her point of view, the European Court of Justice had limited the scope of the extension to 2010 to a limited number of centres (whose transitional period expired shortly after the 2003 decision).

Read more (click to open):

Press release on State aid: Commission amends transitional measures for changing the tax system applicable to Belgian coordination centres

EN FR DE

State Aid: France plans to grant tax aid to insurers

Under French law, insurers for managing certain insurance policies („contrats solidaires“ and „contrats responsible”) shall be granted tax aid in the near future. France considers sees aid as a social measure which is for the benefit of the individual consumer and would not involve any discrimination between the insurance providers.

Doubts whether conditions are met

At this stage the European Commission has doubts that the three conditions (social character, benefit passed on to individual consumer and non-discriminatory measures) which are set out in the EC Treaty are met. It has therefore opened a formal investigation which gives third parties the opportunity to submit their comments.

Read more (click to open):

Press release on State aid: Commission opens formal investigation into French plan to grant tax aid to insurers

EN FR DE

OECD

Real Estate Investment Trusts (REITs) – Public Discussion draft

An informal group of tax officials and experts from the REIT sector was mandated by the OECD Committee on Fiscal Affairs to analyse the issues related to the cross-border tax issues that such investments raise for tax treaties. In recent years the importance and globalisation of investments in and through REITs has been significantly increased.

The report is now released as a public discussion draft. Interested parties may send their comments until 15 January 2008.

Read more (click to open):

Public Discussion Draft on Tax Treaty Issues related to REITs

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IMPRESSUM

Confédération Fiscale Européenne
188A, Av. de Tervuren
B-1150 Brussels

Editor: Stella Willborn

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

Layout: Stella Willborn

++The next issue will be published in January 2008 +++