DIRECT TAX

Commission sets up expert group for automatic exchange of financial account information

On 11 July 2014, the European Commission announced the setting up of a new expert group dealing specifically with the EU **Savings Taxation Directive** and **Directive on Administrative Co-operation in Direct Taxation**. The group will advise the Commission on the alignment of these with the OECD global standard on automatic exchange of financial account information. The mandate of the new expert group will last until June 2017. Organisations representing financial sector businesses and other organisations involved in good tax governance and promoting tax compliance were invited to apply until 8 August 2014.

READ MORE *(click to open)*:

Commission website : **EN** (DE, FR available)

Call for applications: **DE, EN, FR**

Terms of Reference: **DE, EN, FR**

OECD updates Model Tax Convention

On 15 July 2014, the OECD Council approved the 2014 Update to the OECD Model Tax Convention. The Update reflects work carried out between 2010 and the end of 2013, including changes to Article 26 and its Commentary. It also includes the final version of a number of changes that were previously released for comments, like the application of Article 17 (Artists and Sportsmen), the meaning of "beneficial owner", tax treaty issues related to emissions permits and credits, and the tax treaty treatment of termination payments and technical changes. The 2014 update does not yet include any results from the ongoing work on the BEPS Action Plan. As the OECD expects that its work on BEPS will result in changes to the Permanent Establishment provision (Art. 5), this matter has not yet been included in the update. Also amendments concerning the operation of ships and aircraft in international traffic have been postponed, as the OECD considers that further work on these issues is still needed. A consolidated version of the Model Tax Convention will be published in the next few months.

READ MORE *(click to open)*:

2014 update to the OECD Model Tax Convention: **EN**

Press release: **EN** (FR available)

OECD releases full version of global standard for automatic exchange of information

On 21 July 2014, the OECD released the full version of a new global standard for the exchange of information between jurisdictions. The Standard provides for annual automatic exchange between governments of financial account information, including balances, interest, dividends, and sales proceeds from financial assets, reported to governments by financial institutions and covering accounts held by individuals and entities, including trusts and foundations. The new consolidated version includes commentary and guidance for implementation by governments and financial institutions, detailed model agreements, as well as standards for harmonised technical and information technology solutions, notably a standard format and requirements for secure transmission of data.More than 40 countries have committed to a specific timetable leading to the first automatic information exchanges in 2017. There have been two such declarations of OECD and non-OECD countries in March and May 2014 (see CFE European Tax & Professional Law Report **March** and **May** 2014). To enable more jurisdictions to adopt the new standard, OECD is planning to make assistance available to developing countries.

READ MORE *(click to open)*:

Report: A common reporting standard (February 2014): **EN** **FR** **DE**

Full common reporting standard (21 july 2014) : **EN**

OECD press release (21 july 2014): **EN** (FR available)

Cyprus is late in adapting its tax laws to Croatia´s EU accession

On 10 July 2014, the European Commission formally requested that Cyprus implement adaptations of certain EU tax rules to take into account Croatia's accession to the EU, including the Parent-Subsidiary Directive, the Mergers Directive and the Interest and Royalties Directive, intended to prevent double taxation within the Single Market.

France referred to ECJ regarding donations to foreign general-interest bodies

On 10 July 2014, the European Commission decided to refer France to the EU Court of Justice regarding its tax system for donations made to bodies pursuing general-interest objectives. France exempts donations and bequests to public or public-interest bodies, including charities, that exclusively allocate their resources to science, culture or art, from registration duties where these are established and carry out their activities in France. Such organisations having a registered office in another EU or EEA Member State only benefit from this exemption if France has concluded a reciprocity agreement with their country.

READ MORE *(click to open):*

Press release: **EN** (DE, FR availbale)

Revised Parent-Subsidiary Directive formally adopted and published

On 8 July 2014, the EU Ecofin Council formally adopted the amendment the EU Parent-Subsidiary Directive introducing a subject to tax clause. Political agreement on this issue had been reached on 20 June (see **CFE European Tax & Professional Law Report June 2014)**. Member states will have to apply the amended rules as of 1 January 2016.

READ MORE *(click to open):*

Council press release (8 july 2014)

Directive 2014/86/EU in the EU Official Journal of 25 July : **All EU languages**

ECJ rules on treatment of losses of a PE in another member state which is transferred to a non-resident group company

On 17 July 2014, the EU Court of Justice decided in the Danish preliminary ruling case Nordea Bank, C-48/13, that a member state may not, in the event of transfer of a permanent establishment situated in another EU/EEA state to a non-resident company in the same group, reincorporate the PE´s losses previously deducted into the transferring company's taxable profit, in so far as the first member state taxes both the profits made by that establishment before its transfer and those resulting from the gain made upon the transfer.

READ MORE *(click to open):*

Judgment and Advocate-General Opinion: **All EU languages**

CFE comments on cross-border inheritance tax problems

On 3 July 2014, the CFE has responded to the European Commission´s public consultation on cross-border inheritance problems within the EU. The consultation is a follow-up to the Commission´s Recommendation of December 2011 on double taxation of inheritances, setting criteria to determine an order of taxing rights of member states and a mechanism resulting in a tax credit for tax paid in another member state. CFE agrees with the general approach and the recommended criteria but argues in favour of a mechanism that allows the heir to reach a binding solution, if mutual agreement procedures between member states do not result in a solution within a given time period.

READ MORE *(click to open):*

CFE Opinion Statement FC 12/2014: **EN**

Consultation website: **EN** (DE, FR available)

Recommendation 2011/856/EU: **DE, EN, FR**

INDIRECT TAX

ECJ decides on VAT treatment of leasing goods that cannot be recovered

On 17 July 2014, the EU Court Justice decided in case C-438/13, SC BCR Leasing, upon reference for a preliminary ruling by the Appeals Court of Bucharest, that the impossibility for a leasing company of recovering from the lessee the goods let under a financial leasing contract following its termination as a result of the lessee's breach, despite the steps undertaken to recover those goods and despite the lack of any consideration following such termination, may not be treated as a supply of goods for consideration.

READ MORE *(click to open):*

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

Excise duty tables updated to 1 July 2014

The European Commission has updated its excise duty tables showing the rates applicable on 1 July 2014 and the tax receipts until 2013 generated by the sales of energy products, alcoholic beverages and manufactured tobacco.

READ MORE *(click to open):*

Alcoholic beverages: **EN**

Energy proucts: **EN**

Tobacco products: **EN**

2015 VAT changes for e-services, telecom and broadcasting : Commission publishes new guidance in 23+ languages

The European Commission has made available two documents relating to the change of the VAT place of supply rules and the introduction of so-called Mini One Stop Shops for electronic, telecommunication and broadcasting services on 1 January 2015. These are: (1) Explanatory Notes covering the upcoming VAT changes generally and (2) additional guidelines on the Mini One Stop Shops, relating to audit, supplementing the Mini One Stop Shop Guidelines published in October 2013.These documents are not legally binding and should be considered a work in progress, not a final product.

READ MORE *(click to open):*

Guide to the Mini One Stop Shop (23 October 2013): **All EU languages Chinese and Russian**

Additional Mini One Stop Shop guidelineson audit (19 june 2014):
All EU languages, Chinese and Russian

Explanatory notes (30 July 2014) :
All EU languages

Commission asks France to levy VAT on sport events

On 10 July 2014, the European Commission has asked France to levy VAT on tickets for admission to matches and other sport events which are not subject to entertainment tax. Under the VAT Directive, admission fees for sport events should normally be subject to VAT. France grants a total VAT exemption. As a transitional measure and by derogation from the VAT Directive, France has been allowed to maintain an exemption in the case where entertainment tax applies to such events. The conditions have however changed to the extent that France has allowed its municipalities to exempt sport events from entertainment tax. The Commission therefore takes the view that, in this case, the VAT exemption should no longer exist.The request takes the form of a reasoned opinion, giving France two months to comply with the Commission´s request.

READ MORE *(click to open):*

Press release: July infringement package:
All EU languages

Commission refers Portugal to Court over excise duty on cigarettes

On 10 July 2014, the European Commission decided to refer Portugal to the EU Court of Justice for failing to change its excise duty rules related to the marketing of cigarettes. In Portugal, a time limit for the sale of cigarettes applies, linked to the fiscal stamp on the packaging. The design of the tax markings in Portugal changes regularly and a new tax rate frequently applies with the new marking. Cigarettes cannot be sold any later than 3 months after the end of the year that they are released for consumption. Under EU law, excise duty on tobacco products must be charged at the rate applicable on the date on which they are released for consumption. There is no provision under EU legislation which allows Member States to add a supplementary duty to this release-date tax rate, or to limit the distribution of tobacco products for fiscal reasons. The Commission considers the Portuguese sales-and-marketing prohibition disproportionate to any fraud-tackling objective and stresses that tax markings must not create obstacles to the free movement of excise goods.Two reasoned opinions have been sent to Portugal in June 2012 and May 2013.

READ MORE *(click to open):*

Press release: **EN** (DE, FR, PT available)

Commission refers UK to Court of Justice for failure to comply with EU rules on marked fuel

On 10 July 2014, the European Commission decided to refer the United Kingdom to the EU Court of Justice for not properly applying the rules on fiscal marking on fuel.Under EU rules, fuel that can benefit from a reduced tax rate has to be marked by coloured dye. Fishing vessels, for example, are allowed to benefit from a lower taxed fuel but private leisure boats must use fuel subject to a standard rate.Currently, UK law does not require fuel distributors to have two separate fuel tanks to distinguish between the lower tax marked fuel and the fuel subject to the standard rate. As a result private leisure boat owners are often in a situation where they can only purchase marked fuel. As a consequence, they may not pay the right amount of tax and risk heavy penalties. In April 2014, the Commission had also sent a reasoned opinion to Ireland in a similar matter **(see CFE European Tax & Professional Law Report April 2014)**.

READ MORE *(click to open):*

Press release: **EN** (DE, FR available)

VAT Expert Group : Commission extends application deadline

The European Commission has extended the deadline for applications of organisations and individuals for the VAT Expert Group (see **CFE European Tax & Professional Law Report June 2014**). Applications can now be sent until 12 September 2014.

ECJ decides on exemption of imported goods under warehousing arrangements other than customs

On 17 July 2014, the EU Court of Justice has decided in the Italian preliminary ruling case C-272/13, Equoland, that national law may require, for an exemption from paying VAT, that goods which are imported and destined for a tax warehouse for the purposes of VAT be physically placed in that warehouse. However, national law may not require the payment of VAT on importation even though that tax has been settled already under the reverse charge mechanism through self-invoicing and entry in the sales and purchases register of the taxable person.

READ MORE *(click to open):*

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

VAT Forum publishes cross-border rulings pilot cases

On 8 July 2014, the European Commission´s advisory VAT Forum has made a first evaluation of the VAT cross border rulings pilot, allowing taxable persons to obtain advance rulings on the VAT treatment of complex cross-border transactions. To date, 15 member states have joined the project that started in June 2013. The participants expressed their support to continue the project beyond 2014 and to publish the rulings. Participants further regretted that the project lacks visibility, in particular in the SME community. CFE is participating in the VAT Forum.

READ MORE *(click to open):*

Information note: **DE, EN, FR**

Interim Report, see Annex for pilot cases: **EN**
(translations to be available by the end of August)

OTHER TAX POLICY

Financial Activities, Debt Bias and Corporate Taxation: Commission publishes new Taxation Papers

The European Comission has published three new Taxation Papers in July 2014, titled "Financial Activities Taxes, Bank Levies and Systemic Risk" (No.43), "Addressing the debt bias: A Comparison between the Belgian and the Italian ACE Systems" (No.44), and "Effective Corporate Taxation, Tax Incidence and Tax Reforms: Evidence from OECD Countries" (No.45). Taxation papers are usually written by European Commission staff but do not necessarily represent the Commission´s position.

READ MORE *(click to open):*

No 43 on Financial Activities Taxes: **EN**

No 44 on Addressing the Debt Bias: **EN**

No 45 on Effective Corporate Taxation: **EN**

Italian Council presidency priorities in tax

On 1 July 2014, Italy took over the six-monthly presidency of the EU Council. The Ecofin work programme announces that the presidency will focus on issues relating to transparency and the fight against tax fraud and evasion. The following items are named:

- the finalisation of discussions on the revision Directive 2011/16/EU on administrative cooperation in the field of taxation, with the aim of extending the automatic exchange of information in line with new international standards,

- monitoring negotiations on the revision of the agreements with third countries (Andorra, Liechtenstein, Monaco, San Marino and Switzerland) on savings taxation,

- discussions on improvements to administrative cooperation in the field of VAT, and

- discussions on amending the Parent/Subsidiary Directive and carry forward work in the area of mismatches caused by hybrid structures.

The Common Consolidated Corporate Tax Base (CCCTB), with a particular focus on the tax base elements and cross-border aspects, and the Interests and Royalties Directive are mentioned as well.Furthermore, the work programme names discussions on the taxation of the digital economy.In indirect tax, the legislative proposals on the VAT treatment of vouchers and a standard VAT return are specifically mentioned, just as the Energy Taxation proposal and the Financial Transaction Tax, i.a.

READ MORE *(click to open):*

Italian presidency Ecofin work programme: **EN**

OECD publishes Taxation Working Papers dealing with tax expenditures relating to diesel fuel, company cars and commuting

The paper titled "Personal Tax Treatment of Company Cars and Commuting Expenses - Estimating the Fiscal and Environmental Costs" compares the respective tax regimes in 28 countries, demonstrating the magnitude of these tax expenditures.Another paper, "Differences in the Tax Treatment of Gasoline and Diesel for Road Use" questions the beneficial tax treatment of diesel fuels in 33 of 34 OECD countries from an environmental, social and competition perspective.

READ MORE *(click to open):*

Company cars and commuting: **EN**

Diesel fuel: **EN**

BEPS for Developing Countries: OECD publishes report / UN call for more submissions

On 1 August 2014, the OECD has published Part I of a report to the G20 Development Working Group on the impact of BEPS (base erosion and profit shifting) on low income countries, pointing out the most relevant BEPS aspects for these countries, i.a., problems of obtaining relevant data, capacity-building and the danger of a "race to the bottom" through wasteful tax incentives aimed at attracting investment.Meanwhile, the United Nations´ Subcommittee on Base Erosion and Profit Shifting Issues for Developing Countries has called for further responses to its questionnaire published in March 2014 (see **CFE European Tax & Professional Law Report March 2014)**. To date, only four countries and a small number of NGOs have responded to the consultation. French and Spanish versions of the questionnaire have been made available as well.

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

Part I of the OECD Report: **EN**

UN call for further submissions: **EN**

UN BEPS Questionnaire: **EN**, **ES**, **FR**

PROCEDURAL LAW

OECD consults on voluntary disclosure

With the publication of the full version of its global standards on automatic exchange of information (see related article in this report), the OECD has opened a public consultation on voluntary disclosure programmes.Since the proliferation of agreements on exchange of tax information between countries in 2009, according to OECD, more than half a million taxpayers have chosen to voluntarily disclose monies previously hidden from tax authorities, resulting in identification of funds worth € 37 billion worldwide. The OECD is updating policy guidance in this area, contained in a 2010 report, "Offshore voluntary disclosure: comparative analysis, guidance and policy advice". Input on how the framework for voluntary disclosure could be further improved and what particular features might encourage even more taxpayers to come forward and take advantage of such programmes can be sent to OECD until 12 September 2014.

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

2010 Report on Offshore Voluntary Disclosure: **EN**

OECD press release (21 July 2014): **EN** (FR available)

STATE AID

Commission questions tax exemptions for Dutch public companies

On 10 July 2014, the European Commission has opened an in-depth investigation to verify whether exemptions from corporate tax granted under Dutch law to public companies, including port operators, are in line with EU state aid rules. The Commission has concerns that exempting certain companies merely because they are publicly owned may give them an advantage over their competitors. The opening of an in-depth investigation gives interested parties an opportunity to submit comments on the measures under assessment; it does not prejudge the outcome. Separately, the Commission is also gathering information on taxation of ports in other Member States. The Commission is also examining the tax regimes for ports in France, Belgium and Germany.

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

Press release : **EN** (DE, FR, NL available)

Commission approves exemptions from Danish tax on advertising to households

On 9 July 2014, the European Commission decided that a series of reductions and exemptions from a Danish tax on non-nominative advertising material delivered to households is in line with EU state aid rules. The Commission found that while some of these measures contain state aid, it is compatible with EU rules as it furthers EU environmental and cultural goals without unduly distorting competition in the Single Market.Denmark plans to introduce a tax on non-nominative advertising material delivered to households, as it is concerned by the large volume of waste paper generated by households. A reduced rate shall apply to advertising material bearing the EU Ecolabel and concerning certain products.

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

Press release: **EN** (DA, DE, FR available)

Case **SA.35683** in the State Aid Register

COMPANY LAW

Consultation on the potential economic consequences of country- by-country reporting by credit institutions

On 11 July 2014, the European Commission launched a consultation on the potential economic consequences of country-by-country reporting by credit institutions required by Directive 2013/36/EU, including the impact on competitiveness, investment and credit availability and the stability of the financial system. As of 1 January 2015, institutions covered by the Directive will have to disclose annually information i.a. on profits, taxes paid and state aid received for each country in which they have an establishment. Since 1 July 2014, globally systemically important institutions already have to make this information available to the Commission on a confidential basis. The Commission will consider until the end of 2014 the consequences of making such information public. Closing date is 12 September 2014.

READ MORE *(click to open)*:

Consultation document: **EN**

Consultation website: **EN** (DE FR available)

AUDIT

Consolidated version of new Audit Directive available

The European Commission has made a consolidated version of the EU Audit Directive available, including the amendments adopted by the European institutions in spring 2014.

READ MORE *(click to open)*:

Official Journal: **All EU languages**

OTHER EU POLICY

MEPs vote for Juncker as Commission President and on Committee chairs

The new European Parliament Committees met on 7 July 2014 and elected their chairs. Roberto Gualtieri (Italian Social Democrats) will chair the Economic and Monetary Affairs Committee (ECON) and Vicky Ford (UK Conservatives) the Internal Market and Consumer Protection Committee (IMCO). The Legal Affairs (JURI) and Civil Liberties, Justice and Home Affairs (LIBE) Committees will be chaired by Pavel Svoboda (Czech Christian Democrats) and Claude Moraes (UK Labour Party) respectively.On 15 July, the MEPs voted for Jean-Claude Juncker (EPP) as new Commission President (422 in favour, 250 against, 47 abstentions). According to press reports, Jean-Claude Juncker, in talks with different political groups prior to his election, made concessions to different groups. To ALDE (Liberals), he expressed his support for a CCCTB and an own source of tax revenue for the EU.

READ MORE *(click to open)*:

ECON members

IMCO members

JURI members

LIBE members

PROFESSIONAL QUALIFICATIONS

ECJ confirms: Registration as a lawyer in a member state after short-term registration in another member state is no abuse of right

On 17 July 2014, the EU Court of Justice confirmed the view of Advocate-General Nils Wahl (see **CFE European Tax & Professional Law Report April 2014**) that that the right of a lawyer to establish himself in another member state does not depend on the length of time that he has been registered in the member state where he obtained his qualification, or on the actual exercise of the activity as a lawyer in this member state (case C-58 and 59/13, Torresi).

Returning to a member state in order to practise there the profession of lawyer under the title obtained in another member state does not constitute an abuse of rights, even if this happens shortly after the title has been obtained. The case concerned two Italians who, after they had obtained university law degrees in Italy, obtained a university law degree in Spain. They were registered as lawyers in Spain and applied two and a half months later to an Italian bar for registration in the section for lawyers who hold a title issued in a member state other than Italy, but who are established in Italy. The Court decided that national law may not attach further conditions, beyond the requirements contained in the Directive, to the right of an EU citizen to have his qualification recognised in another member state. Demanding a minimum period of practical experience in the country where the title has been obtained would be such an extra condition.

READ MORE *(click to open):*

Press release: **EN**
(for **further language versions** see Press release 103/2014)

Judgment and Advocate-General Opinion:
Most EU languages

Commission takes action against Austria concerning partial access to a regulated profession

EU member states must, under certain conditions, grant access to some of the activities reserved to a regulated profession to a professional from another member state who holds a qualification that covers only these activities, according to case law of the EU Court of Justice (C-330/03). In November 2013, the right to partial access to a regulated profession and its conditions have been specified in the revised Professional Qualifications Directive 2013/55/EU which is still to be implemented by member states. The profession of tax advisers is regulated in many European countries, while the reserved activities of tax advisers differ in the countries concerned.On 10 July 2014, the European Commission has sent reasoned opinions to Austria, requesting i.a. the abolition of regional legislation which requires a comprehensive alpine ski instructor qualification from all ski instructors, not recognising specialist qualifications like „Telemark ski instructor", „adaptive ski instructor" or „Nordic ski instructor" from other EU member states. If Austria fails to comply with the Commission´s requests within 2 months, the Commission may take the country to the ECJ.

READ MORE *(click to open):*

Press release: July infringement package:
All EU languages

EVENTS

Save the date: PAC Conference "Tax Transparency – The challenge of making it work" on 5 December in Paris

The 7th CFE Professional Affairs Conference will deal with three aspects of tax transparency, currently discussed at EU and OECD level: These are corporate country-by-country reporting, mandatory disclosure of tax avoidance schemes and "cooperative compliance" in the relationship between taxpayers and their advisers and the tax administration.In 2014, following vehement discussions, the EU legislators opted against the introduction of country-by-country reporting of tax payments by all large enterprises in the EU Accounting Directive, but included a review clause to make sure that the topic will remain on the agenda. Disclosure of tax avoidance schemes, mandatory in a number of countries, is in the focus of OECD as one possible solution to "base erosion and profit shifting" (BEPS). "Cooperative compliance" finally is a term coined by the OECD, advocating an end of the adversarial relationship between taxpayers/advisers and tax authorities. Taking a closer look at the French tax administration´s recently introduced "relationship of trust", the PAC conference will discuss whether cooperative compliance is a model for the future or merely a fair weather approach.The conference will take place on Friday, 5 December 2014 in central Paris. Speakers include experts from OECD and tax administration as well as business representatives, academics and tax practitioners. The detailed programme will be available in September.

IMPRESSUM

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