CFE
European Tax Report
European Professional Law Report
March 2014

DIRECT TAX

Breakthrough in EU Savings Tax revision

On 21 March 2014, more than five years after the Commission´s proposal, the EU member states reached an agreement on the revision of the EU Savings Tax Directive, extending the scope to life insurance contracts, investment funds, pensions and innovative financial instruments. It will also capture payments made through structures such as trusts and foundations. This breakthrough has been made possible after the European Commission had reached agreement on introducing automatic exchange of information as the new standard with Switzerland, Andorra, Liechtenstein, Monaco and San Marino. This had made Austria and Luxembourg drop their objections towards automatic exchange of information at EU level. The proposal was adopted by the EU Council on 24 March 2014. The new rules have to be in place by 1 January 2016 and will apply one year later.

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

Text of new EU Savings Tax Directive: **EN**

EU Council press release: **EN**

European Council conclusions: **EN**

Speech by Algirdas Šemeta: **EN**

BEPS: Consultation on hybrid mismatch arrangements

On 19 March 2014, the OECD released two discussion drafts for comment. Both relate to Action 2 of the BEPS Action Plan which calls for the development of model treaty provisions and recommendations for the design of domestic rules to neutralise the effect (e.g. double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. Comments should be submitted by 2 May 2014.

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

OECD website: **EN** (FR available):

1st Discussion Draft, "Recommendations for Domestic Laws": **EN**

2nd Discussion Draft, "Treaty Aspects of the Work on Action 2 of the BEPS Action Plan": **EN**

EP supports Parent-Subsidiary proposal

On 2 April 2014, following the report from its ECON Committee on 24 March 2014, the European Parliament plenary voted on the proposed revision of the EU Parent-Subsidiary Directive. The EP largely supports the Commission´s proposal which includes an EU-wide general anti abuse rule and a subject-to-tax clause designed at preventing that income is neither taxed in the source nor in the residence state, suggesting however a wider wording of the anti-abuse clause. The rapporteur Mojca Kleva Kekuš (S&D, Slovenia) had suggested ensuring a minimum taxation of payments at 75% of the average EU corporate income tax rate; this however has not been successful. As the European Parliament only has consultative powers in this dossier, this opinion is not binding for member states which will have to decide unanimously.

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

ECON Report: **EN** (all EU languages)

OECD releases comments on transfer pricing documentation and country-by-country reporting

The OECD has released the public comments received on its Discussion Draft on Transfer Pricing Documentation and Country-by-Country Reporting (BEPS Action 13).

DIRECT TAX

READ MORE *(click to open):*

Comments: **EN**

BEPS: Consultation on tax treaty abuse

On 14 March 2014, the OECD has released for comments a discussion draft "Preventing the granting of tax treaty benefits in inappropriate circumstances" on the prevention of tax treaty abuse. The consultation is part of the BEPS (base erosion and profit shifting) project, Action 6. The BEPS Action Plan identifies treaty abuse, and in particular treaty shopping, as one of the most important concerns. Deadline for comments was 9 April 2014. The CFE has participated in the consultation.

READ MORE *(click to open):*

OECD discussion draft: **EN**

Comments received: **EN**

OECD consults on transfer pricing comparability data and developing countries

On 11 March 2014, the OECD released a draft paper discussing four possible approaches to addressing the lack of availability and quality of information on comparable transactions in transfer pricing data, responding to a concern of developing countries. Deadline for comments was 11 April 2014.

READ MORE *(click to open):*

OECD news release: **EN** (FR available)

Discussion draft: **EN**

CFE comments on aggressive tax planning, an EU GAAR and double-non taxation

On 14 March 2014, the CFE has commented on the European Commission´s Recommendation C(2012)8806 on aggressive tax planning and subsequent related working papers issued by the Commission services. The Recommendation suggests that EU member states adopt in their national laws and their tax treaties a subject to tax clause and furthermore, in their national laws, a general anti abuse rule. The CFE comments relate to the design of such provisions and emphasise the need for elimination of double taxation, coordination of EU measures and action taken at OECD level and the respect for tax sovereignty of member states.

READ MORE *(click to open):*

Opinion Statement FC 3/2014: **EN**

Commission asks Ireland to stop discriminatory taxation of termination payments

On 28 March 2014, the European Commission has asked Ireland to amend its legislation on termination payments, as it discriminates against individuals who work in group companies in other Member States. To compute the tax relief on such payments, Irish law does not take into account the number of years of service in group companies in other member states, leading to a higher tax burden for individuals who worked in these group companies. The request takes the form of a reasoned opinion.

READ MORE *(click to open):*

- Press release: **EN**

ECJ on consortium group relief: UK legislation infringes EU law

On 1 April 2014, the European Court of Justice held in case C-80/12, Felixstowe Dock and Railway Company, that UK tax legislation infringes freedom of establishment by providing that the link company must be established in the UK in order for companies to be entitled to consortium group relief. The fact that the ultimate parent company of the group and of the consortium as well as a number of intermediate com-

DIRECT TAX

panies are established in third States has no effect on the application of freedom of establishment in such a context.

READ MORE *(click to open)*:

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

Judgment: **All EU languages**

ECJ: Income tax cap needs to take into account tax on dividends paid in another member state

On 13 March 2014, the European Court of Justice delivered its judgment in the preliminary ruling case C-375/12, Bouanich 2, upon reference by the Tribunal Administratif de Grenoble/France, concerning a French limitation to the imputation of a tax credit on the tax on dividends paid by a French resident in another member state who he holds a share in a company. France applies a cap on direct taxes at a certain percentage of income received during a year. As the Court states, the EU fundamental freedoms require that this tax cap also takes into account the tax paid in the state of the distributing company.

READ MORE *(click to open)*:

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

INDIRECT TAX

Revised excise duty rates on alcohol, tobacco and energy

The European Commission has updated (to 1 January 2014) its overview on excise duty rates on alcoholic beverages, manufactured tobacco and energy products and electricity.

READ MORE *(click to open)*:

Manufactured tobacco: **EN** (DE, FR available)

Alcoholic beverages: **EN** (DE, FR available)

Energy products and electricity: **EN** (DE, FR available)

Registration open for Commission conferences in London and Luxembourg on 2015 VAT rules

The European Commission, together with the UK tax administration HMRC and the Luxembourg Chamber of Commerce respectively, is hosting two conferences on 15 May 2014 in Luxembourg and on 2 June 2014 in London on the new VAT rules and "mini one-stop-shops" for e-services, telecom and broadcasting as of 2015. Deadline for registration (for London) is 25 April 2014.

READ MORE *(click to open)*:

Invitation London: **EN**

Invitation Luxembourg: **FR**

ECJ rules on deduction of input VAT for acquisition of a tax firm´s client base

On 13 March 2014, the European Court of Justice decided in the preliminary ruling case C 204/13, Malburg, upon reference by the German Federal Fiscal Court (Bundesfinanzhof), that a partner in a partnership of tax advisers who acquires from that partnership a portion of its client base for the sole purpose of making that client base available directly and free of charge to a newly founded partnership of tax advisers, in which he is the principal partner, so that that partnership can use that client base in its business, without that client base however becoming part of the capital assets of the newly founded partnership, is not entitled to deduct input VAT paid on the acquisition of the client base concerned.

INDIRECT TAX

READ MORE *(click to open):*

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

ECJ: Lump-sum payment for health-care may be subject to VAT

On 27 March 2014, the European Court of Justice decided in the preliminary ruling case C-151/13, Le Rayon d'Or, upon reference by the Cour Administrative d'Appel de Versailles, that a lump-sum payment by the national sickness insurance fund to residential care homes for the elderly in exchange for the provision of healthcare to the latter falls within the scope of value added tax.

READ MORE *(click to open):*

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

ECJ rules on the adjustment of the VAT deduction if the transaction is not carried out

On 13 March 2014, the European Court of Justice decided in the preliminary ruling case C 107/13, FIRIN, upon reference by the Veliko Tarnovo Administrative Court (Bulgaria), that the VAT deduction by the recipient of an invoice drawn up with a view to a payment being made on account in relation to the supply of goods be adjusted where that supply is ultimately not made, even if the supplier remains liable for that tax and has not refunded the payment made on account.

READ MORE *(click to open):*

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

Advocate-General Opinion: **EN** (all EU languages available)

ECJ decides on VAT treatment of goods returned to the member state from which they were dispatched

On 6 March 2014, the European Court of Justice decided in the joint preliminary ruling cases C- 606 and 607/12, DresserRand, upon reference by the Commissione Tributaria Provinciale of Genua, that, in order for the dispatch or transport of goods not to be classified as a transfer to another member state, those goods, after the work on them has been carried out in the member state in which dispatch or transport of the goods ends, must necessarily be returned to the taxable person in the member state from which they were initially dispatched or transported.

READ MORE *(click to open):*

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

ECJ decides on VAT treatment of travel agents and the circumvention of a standstill clause by a member state

On 13 March 2014, the European Court of Justice decided in the preliminary ruling case C-599/12, Jetair, upon reference by the Court of First Instance of Bruges/Belgium, that a Member State is free not to treat the services of travel agents as VAT-exempt intermediary activities where those services relate to journeys outside of the EU and to impose VAT on those services, and if it already imposed VAT on those services on 1 January 1978. It is not against EU law that the current VAT Directive grants member states the option to continue to tax the supply of these services in relation to journeys outside the EU. A member state may thus treat travel agents differently from intermediaries with regard to journeys outside the EU and enact such legislation. This is not changed by the fact that the Belgian VAT treatment of travel agents with regard to journeys outside the EU was only introduced during the transposition period of the 6th VAT Directive.

READ MORE *(click to open):*

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

INDIRECT TAX

ECJ rules on the conditions of exemption from VAT of drugs for the treatment of outpatients by an independent doctor in a hospital

On 13 March 2014, the European Court of Justice decided in the preliminary ruling case C 366/12, Klinikum Dortmund, upon reference by the German Federal Fiscal Court (Bundesfinanzhof), that a supply of goods prescribed in the course of outpatient cancer treatment by doctors working in an independent capacity in a hospital may not be exempt from VAT, unless that supply is physically and economically indissociable from the principal supply of medical care.

READ MORE *(click to open):*

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

ECJ does not dismiss Spanish indirect tax on the acquisition of companies holding immovable property

On 20 March 2014, the European Court of Justice, in the preliminary ruling case C 139/12, Caixa d'Estalvis i Pensions de Barcelona, upon reference by the Spanish Tribunal Supremo, did not dismiss a provision of Spanish law imposing an indirect tax on the acquisition of the majority of the capital of a company, the assets of which essentially comprise immovable property. The EU VAT Directive does not hinder the imposition of such tax. As concerns the compatibility with the EU fundamental freedoms, the ECJ declined its jurisdiction, concluding that all aspects of the dispute in the main proceedings are confined within one single member state.

READ MORE *(click to open):*

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

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

34+ countries form group of early adopters of new OECD common reporting standard

On 19 March 2014, 34 countries plus 10 UK Crown Dependencies and Overseas Territories declared their commitment to be among the early adopters of the new OECD cross-border tax information exchange standard presented in February 2014 (see **CFE European Tax & Professional Law Report February 2014**). This list contains most (including all larger) EU member states and a number of large non-European economies such as India and Mexico. The standard obliges countries and jurisdictions to exchange information obtained from their banks and financial institutions automatically on an annual basis.

The declaration contains deadlines for the different steps in the adoption process. New account opening procedures shall be in place by 1 January 2016 while the first actual exchange of information shall take place by the end of September 2017.

G20 governments have mandated the OECD-hosted Global Forum on Transparency and Exchange of Information for Tax Purposes to monitor and review implementation of the standard.

The OECD is expected to deliver a detailed Commentary on the new standard, as well as technical solutions to implement the actual information exchanges, during a meeting of G20 finance ministers in September 2014.

READ MORE *(click to open):*

Early adopters statement: **EN**

OECD news release : **EN** (FR available)

OTHER TAX POLICY

Commission publishes EU 2013 activity report in taxation

The report summarises EU-, mainly European Commission, action in taxation in 2013, listing proposed and adopted legislation as well as non-legislative measures like tax coordination, public consultations, studies, publications or infringements procedures.

OTHER TAX POLICY

READ MORE *(click to open)*:

Activity report: **EN**

3rd European Commission Digital Economy Working Group meeting

On 14/15 March 2014, the European Commission hosted the third meeting of its working group on taxation of the digital economy. Among the topics discussed were the interaction with the OECD work on this topic, the new EU VAT rules for electronic services as of 2015 and a possible future extension of the "mini-One-Stop-Shops", and the difficulties that the specific characteristics of digital services pose to the traditional concepts of corporate taxation, in particular the new forms of value creation in e-business models and the lack of a geographical nexus. The next meeting of the group will take place on 24/25 April 2014.

READ MORE *(click to open)*:

Summary record: **EN**

Agenda: **EN**

Digital Economy - Facts & Figures: **EN**

VAT Issues: **EN**

OECD consults on taxing the digital economy

On 24 March 2014, the OECD released the Discussion Draft "Tax Challenges of the Digital Economy", relating to Action 1 of the BEPS Action Plan. Comments had to be submitted by 14 April 2014. The CFE has participated in the consultation.

READ MORE *(click to open)*:

Discussion Draft: **EN**

Recording of BEPS webcast of 2 April 2014 available online

On 2 April 2014, the OECD gave an update on the BEPS project via webcast, touching upon:

- Transfer Pricing Documentation and Template for Country-by-Country Reporting
- Tax Treaty Abuse
- The Tax Challenges of the Digital Economy
- Hybrid Mismatch Arrangements, and
- Consultation with developing countries.

The recording of the webcast is now available online.

READ MORE *(click to open)*:

Recorded webcast: **EN**

Presentation: **EN**

ECJ: 2013 another record year

According to the European Court of Justice´s statistics recently published, the number of completed cases has risen considerably in 2013 (701 in total, compared to 595 in 2012). The number of new cases brought before the Court (699) was the highest in the Court´s history and is a 10% increase compared to 2012. Preliminary rulings cases (64% of all cases brought before the Court) in average have taken 16.6 months.

READ MORE *(click to open)*:

Press release: **EN** (available in **all EU languages**, see no.34/2014)

STATE AID

Commission at odds with Luxembourg over secrecy in information requests on tax rulings and IP regime

On 24 March 2014, the European Commission has adopted two information injunctions ordering Luxembourg to deliver information relating to tax ruling practices as well as intellectual property (IP) tax regimes which the Commission is currently checking for com-

STATE AID

pliance with EU state aid rules. Tax rulings are not per se problematic under EU state aid rules, but only if provide selective advantages to specific companies or groups of companies. For this purpose, the Commission sent information requests to several Member States, including Luxembourg. In both inquiries, Luxembourg refused to respond fully to the requests, invoking fiscal secrecy. Regarding tax rulings, Luxembourg only provided general information but not a specific overview of rulings it took in 2011 and 2012. Luxembourg also refused to deliver the details of the 100 largest companies falling under its IP tax regime.

The Commission is entitled to request any information it deems necessary for a state aid investigation, and Member States are under a duty to respond. It considers that confidential fiscal information remains adequately protected, as the Commission itself is bound by rules of confidentiality.

If Luxembourg fails to comply with the Commission´s injunction within one month, the Commission may refer the issue to the EU Court of Justice.

READ MORE *(click to open):*

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

Commission approves UK video games tax relief plan

On 27 March 2014, the European Commission has concluded that the UK´s plans to grant certain tax relief to producers of video games are in line with EU state aid rules. The Commission has found in particular that the measure provides incentives to developers to produce games meeting certain cultural criteria, in line with EU objectives.

In April 2013, the Commission opened an in-depth investigation because it had doubts that the aid was necessary (see **CFE European Tax & Professional Law Report April 2013**). There seemed to be no obvious market failure in this dynamic and growing sector and games were being produced even without state aid. The Commission also considered that limiting the expenditure qualifying for the tax relief to goods or services ‚used or consumed‘ in the UK would be discriminatory. In-depth analysis of comments received and some amendments proposed by the UK had led the Commission to resolve its doubts.

The UK removed the originally envisaged territorial spending obligations imposed on beneficiaries of the scheme but demonstrated that the proposed cultural test ensures that the aid supports only games that are of cultural value. Only around 25% of UK produced games would be eligible for aid.

READ MORE *(click to open):*

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

Commission opens in-depth inquiry into French tax reductions for large energy consumers

On 27 March 2014, the European Commission has concluded that a French scheme providing support to the production of green energy through obliging distributors to buy energy from producers at feed-in tariffs above market price and obliging energy customers to pay a surcharge compensating this disadvantage is compatible with EU state aid rules. In parallel, the Commission has however opened an in-depth investigation into exceptions to these surcharges granted by French law.

Reductions apply for own consumption of auto-produced electricity and for large industrial consumers. These appear to give large electricity consumers a selective advantage that could distort competition. The possibility of such reductions is not (yet) foreseen under the current EU 2008 Guidelines on Environmental Aid. In December 2013, the Commission had opened an in-depth investigation into similar reductions in Germany.

The opening of an in-depth investigation gives interested third parties an opportunity to submit comments but does not prejudge the outcome of the investigation.

READ MORE *(click to open):*

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

ACCOUNTING

EP Committee votes on compromise on disclosure of non-financial information

On 20 March 2014, the European Parliament´s JURI Committee endorsed the compromise on the disclosure of certain non-financial information by large companies in the EU Accounting Directive, reached on 26 February 2014 (see CFE´s Tax Top 5 of 3 March 2014). As to the proposed (but not decided) mandatory disclosure of tax payments of large undertakings on a country-by-country basis, the text adopted on 20 March contains only a minor change to the version voted by JURI on 17 December 2013. The EP plenary will vote on the proposal on 15 April 2014.

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

JURI vote of 20 March 2014, consolidated version: **EN**

CRIMINAL LAW

EP Committees in favour of harmonising criminal law provisions relating to VAT fraud

The two Committees for Budgetary Control and for Civil Liberties, Justice and Home Affairs of the European Parliament have voted on 25 March 2014 on the proposal for a “Directive on fight against fraud to the EU´s financial interest by means of criminal law”. The proposal contains harmonisation of certain criminal offences and penalties. Along with the European Commission, and contrary to the preliminary compromise reached in June 2013 among member states, the two Committees favour the inclusion of VAT fraud in the scope of the Directive. The CFE, in its Opinion Statement FC 2/2013, has also argued against an extension to VAT fraud. The EP plenary vote is scheduled for 16 April 2014.

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

Text voted by CONT/LIBE Committees: **EN** (all EU languages)

Preliminary EU Council compromise: **EN**

CFE Opinion Statement FC 2/2013: **EN**

CFE NEWS

CFE Forum 2014 discussed “Policies for a sustainable tax future”

The 2014 CFE Forum, held on 27 March 2014 in Brussels, gathered 136 tax advisers, EU and national tax administration officials, tax academics and others stakeholders from all over Europe. The topic “Policies for a sustainable tax future” included the current OECD work on BEPS, its interaction with EU law and EU policy initiatives and its repercussions on businesses´ compliance efforts and competiveness, as well as the proposal for a Financial Transaction Tax in 11 EU member states. Speakers were the European Commission´s Indirect Tax Director Manfred Bergmann, officials from the Czech and Italian tax administration, tax practitioners and leading tax academics. All presentations as well as an Article published by “Tax Analysts” can be downloaded on the CFE website.

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

All presentations and Tax Analysts Article: **EN**

CFE Albert J. Rädler Medal awarded for the first time

On 27 March 2014, for the first time, the CFE awarded the Albert J. Rädler Medal, donated to encourage academic excellence in European taxation and to recognize Professor Albert J. Rädler’s highly renowned and ground-breaking contribution to the field of taxation within Europe. The award was given to Loes Brilman, a graduate of Tilburg University in the Netherlands for her master thesis entitled „Emigration and immigration of a business: impact of taxation on European and global mobility“. The Albert J. Rädler

CFE NEWS

Medal will be awarded on an annual basis.

READ MORE *(click to open):*

CFE Press release: **EN**

Winning thesis: **EN**

ANTI MONEY LAUNDERING

EP plenary votes for public registers of beneficial owners

The European Parliament has adopted the proposal for a 4th Anti Money Laundering Directive, as suggested by its ECON and LIBE Committees. The text includes numerous amendments to the Commission´s proposal of which the most prominent is the introduction of a public register including beneficial owners of EU-based entities including trusts.

Reportedly, Denmark, Estonia, Germany, Luxembourg, the Netherlands and Poland are against a beneficial ownership register while France and the UK appear to be in favour; the UK however appears to oppose the inclusion of trusts. This suggests a need for additional discussions between the EU Council and the Parliament. These will take place in the second half of this year, with the new European Parliament elected in May.

The CFE had, in its second Opinion Statement on the AML Directive proposal in January, (successfully) argued against extending the scope of the Directive to legal practices such as tax avoidance, as it had been proposed by a number of MEPs.

READ MORE *(click to open):*

Text adopted (all EU languages): **EN**

CFE Opinion Statement PAC 1/2014: **EN**

AUDIT

EP approves audit reform compromise

On 3 April 2014, the European Parliament plenary approved the compromise reached in December 2013 on the reform of the EU audit regime (see **CFE European Tax & Professional Law Report January 2014**). The EU Council is likely to adopt the text unchanged at one of its next meetings.

READ MORE *(click to open):*

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

IMPRESSUM

CONFEDERATION FISCALE EUROPEENNE

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, Management Assistant