European Tax Report
European Professional Law Report
August / September 2013

CFE EVENTS

CFE Professional Affairs Conference on 22 November 2013 in Milan: Change of climate in taxation – Are you prepared for extended responsibilities?

International and EU action against "harmful tax practices" is extending the concept of abuse of law. Hitherto legal structures are increasingly moved into a grey area. The loss of legal certainty resulting from this for tax payers is not merely a side effect of governments´ desire for more flexibility in defending their tax bases and finding ways to increase tax collection. Indeed it is intended as a deterrent for taxpayers and their advisers.

Will an advice given today be considered abusive in the future? Tax advisers do not only have to adapt their daily practice to this changing environment, but they also have to worry about consequences from past advice given to clients. Tax advisers have to manage not only the risks clients face but also their own risks. There may be civil liability to clients for advising too aggressively but also for not informing them of tax planning opportunity. Further threats include exclusion from public sector work, disciplinary sanctions and even criminal penalties.

READ MORE *(click to open):*

CFE Website: **EN**

DIRECT TAX

Commission takes Belgium to Court over Walloon rules on share quotations for inheritance tax purposes

On 26 September 2013, the European Commission decided to refer Belgium to the European Court of Justice over tax rules in the Walloon Region that the Commission views as are discriminatory and in breach of the free movement of capital. The Walloon legislation provides for a choice between several share quotations to determine the taxable base for inheritance tax purposes. This provision allows heirs to choose the most favourable for them, usually the lowest. This choice is however only offered for shares listed on a Belgian stock exchange. Shares listed on stock exchanges of other EU or EEA countries can only be valued at the stock market price at the time of death without any possible choice between quotations.

The European Commission sent a reasoned opinion to Belgium in April 2012 requesting Belgium to amend this law (see **CFE Tax & Professional Law Report April 2012**), without satisfactory response.

READ MORE *(click to open):*

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

Commission asks Belgium for equal treatment of Belgian and foreign collective investment undertakings

The European Commission has officially asked Belgium to amend the rules which it applies for the annual taxation of foreign collective investment undertakings (CIUs). Belgian legislation grants a reduced rate of the annual tax only to CIUs under Belgian law. This result in less favourable treatment for similar CIUs governed by the law of other EU or EEA countries. The Commission considers that the Belgian tax rules go against the freedom of establishment and the free movement of capital.

The CIUs concerned are CIUs governed by foreign law of which one or more sections or classes of securities are collected exclusively from institutional or professional investors acting on their own behalf and whose securities may be purchased only by these investors. The Commission's request takes the form of a reasoned opinion. If Belgium fails to comply within two months, the Commission may refer the matter to the European Court of Justice.

READ MORE *(click to open):*

Press release, September infringement package: **EN** (most EU languages available)

DIRECT TAX

Commission asks Belgium to stop discriminatory taxation of undertakings for collective investment in transferable securities

The European Commission has officially asked Belgium to amend the tax regime applied by the Walloon region to donations of certain units in undertakings for collective investment in transferable securities (UCITS) from other EU or EEA countries. Belgian legislation provides for a reduced taxation rate only for donations of units in closed-end Belgian UCITS and private Belgian UCITS (which collect capital without promoting the sale of their shares to the public), but not for donations of units in similar UCITS elsewhere in the EU. The Commission considers that Belgian tax rules go against the free movement of capital. The Commission's request takes the form of a reasoned opinion. If Belgium fails to comply within two months, the Commission may refer the matter to the European Court of Justice.

READ MORE *(click to open):*

Press release, September infringement package: **EN** (most EU languages available)

Commission requests Romania to review its tax rules on non-residents' employment income

On 26 September 2013, the European Commission has officially asked Romania to amend its tax treatment of employment income of non-residents. Romanian legislation does not allow non-resident individuals who work and earn all or most of their income in Romania to benefit from personal and family deductions. This may result in higher taxation in Romania, as the taxpayer's personal and family situation risks being disregarded in both his country of residence where he does not have sufficient taxable income and in Romania as the country of employment.

According to the Commission, these Romanian provisions are contrary to the principle of free movement of workers as set out in the EU Treaties and EU case-law which has established that non-resident taxpayers earning all or most of their income in an EU Member State must receive the same treatment as resident taxpayers (Case C-279/93 Schumacker). The Commission's request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer Romania to the European Court of Justice.

READ MORE *(click to open):*

Press release, September infringement package: **EN** (most EU languages available)

OECD publishes comments received on the new Draft Handbook on Transfer Pricing Risk Assessment

The OECD has published the 20 comments received from interested parties in its public consultation on the new Draft Handbook on Transfer Pricing Risk Assessment, produced by the OECD Global Forum on Transfer Pricing.

READ MORE *(click to open):*

Comments received: **EN**

OECD releases memorandum on transfer pricing documentation and country by country reporting

On 3 October 2013, in advance of its 12-13 November 2013 public consultation event on transfer pricing, the OECD released a memorandum describing certain issues related to transfer pricing documentation and country by country reporting that will be discussed at the consultation event.

READ MORE *(click to open):*

Memorandum : **EN**

INDIRECT TAX

ECJ dismisses infringement actions concerning special VAT schemes for travel agents

The European Court of Justice has dismissed on 26 September 2013 in joined cases C-189, 193, 236, 269, 293, 296, 309 and 450/11 (Commission v Spain, Poland, Italy, Czech Republic, Greece, France, Fin-

land and Portugal) the Commission's infringement actions against these countries, upholding in part the action against Spain. Contrary to the Commission, the Court agrees with the above-mentioned member states that the provisions of the special VAT scheme for travel agents are not limited to sales of travel services to travellers and extend to sales to any customer.

The Court acknowledges that there are particularly significant differences between the language versions of the directive, some using the term 'traveller' and/or the term 'customer', at times varying the use of those terms from one provision to another. The Court points out that where there are discrepancies between the various language versions of an EU instrument, the provision at issue must be interpreted by reference to the general scheme and purpose of the rules of which it forms part. In that regard, the Court considers that an approach consisting in applying the special scheme to any type of customer is the best way of achieving the aims of the scheme. It enables travel agents to benefit from simplified rules regardless of the type of customer to whom they provide their services, while encouraging a fair distribution of receipts between the member states. Furthermore, the Court has already interpreted the word 'traveller' by giving it a meaning wider than that of final consumer.

READ MORE *(click to open):*

Press release: **EN** **FR** **DE** **CS** **ES** **EL** **FI** **IT** **PL** **PT**

Judgments:
Czech Rep.: **CZ, FR**
Finland: **FI, FR**
France: **FR**
Greece: **FR, GR**
Italy: **FR, IT**
Poland: **FR, PL**
Portugal: **FR, PT**
Spain: **FR, ES**

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

ECJ: Member state company may not take into account the turnover of its branches abroad when calculating deductible proportion of VAT (Crédit Lyonnais)

On 12 September 2013, the European Court of Justice decided in case C-388/11, Crédit Lyonnais, that a company whose principal establishment is in a member state may not take into account, in order to calculate its deductible proportion of VAT, the turnover of its branches established abroad. The 6th VAT Directive did not provide for the application of 'a worldwide proportion'.

The ECJ notes, first, that the deduction system laid down in the directive is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities. The common system of VAT consequently ensures complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that those activities are subject to VAT. In particular, where the VAT relates to goods or services used by the taxpayer both for transactions in respect of which VAT is deductible and for transactions in respect of which it is not, only the proportion attributable to the former is deductible. The right to deduct is quantified according to a proportion fixed in accordance with the directive. However, the manner in which the calculation of the deductible proportion must be carried out is for national VAT system to determine, which may even exclude the right of deduction in certain circumstances.

The Court also makes clear that the method of repayment of VAT (by deduction or by refund) depends solely on the place where the taxable person is established (principal establishment or any fixed establishments in another member state). Thus, a company which has its principal establishment in one member state and a fixed establishment in another member state must be considered as being established in the last-mentioned member state for the activities carried out there and can no longer claim a refund of the VAT. It is for that fixed establishment to seek, from the tax authorities of that state, deduction of VAT in respect of the acquisitions made there.

Consequently, a single taxable person with its principle establishment and fixed establishments, may be subject to as many national systems of deduction as there are member states in which it has establishments.

As the methods of calculation of the proportion constitute a fundamental element of the deduction system, account cannot be taken, in the calculation applicable to the principal establishment of a taxpayer es-

tablished in a member state, of the turnover of all of the taxable person's fixed establishments in the other member states.

Furthermore, the Court replies, that, in determining the deductible proportion of VAT applicable to it, a company, the principal establishment of which is situated in a member state, may not take into account the turnover of its branches established in third states, as the directive does not support such conclusion. The Court thus rejects the bank´s argument according to which a company which has a branch in a third state must, for VAT purposes, be treated in the same way as a company which has a subsidiary in that state.

The Court holds, lastly, that the directive does not permit a member state to adopt a rule for the calculation of the deductible proportion per sector of business of a company subject to tax which authorises that company to take into account the turnover of a branch established in another member state or in a third state: 'Sectors of business' refers not to geographic areas but to different forms of economic activities such as the activities of producers, traders and persons supplying services.

READ MORE *(click to open):*

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

Judgment and Advocate-General opinion: **all EU languages**

Advocate General: Hungarian retail tax not discriminatory but may infringe VAT rules

On 5 September 2013, European Court of Justice Advocate-General Juliane Kokott delivered her opinion in case C-385/12, Hervis, on the Hungarian special tax on retail trade, saying that that tax does not discriminate against foreign undertakings but may infringe EU VAT rules.

The Hungarian tax on specific retail activities is chargeable on turnover above HUF 500 million (€1.7 million), the progressive rate starting at 0.1% or 0.4% and reaching 2.5% for turnover exceeding HUF 100 billion (approximately €336 million), applying on the total turnover of a group of related undertakings in Hungary. Hervis, a Hungarian company, had to pay a higher tax due to the fact that it belongs to an Austrian retailer which holds several companies in Hungary. Hervis had argued that such tax discriminated specifically against foreign undertakings, as large retailers are mainly in the hands of foreign groups; in contrast, Hungarian proprietors employing the franchise model would be favoured, as only each individual franchisee's turnover is relevant. Against that background the Hungarian court has asked the Court of Justice about the compatibility of the special tax with EU law.

According to Advocate-General, the Hungarian rule does not contain an open or covert discrimination of non-residents. It is not apparent that the vast majority of retail undertakings with high turnover are operated by non-residents, whereas retail undertakings with low turnover are operated by residents. Moreover, retail undertakings which are part of a franchise structure and those belonging to a company group are not in an objectively comparable situation.

However, the Hungarian special tax may infringe the VAT Directive, according to which member states are prohibited from levying taxes which can be characterised as turnover taxes. Contrary to previous case-law, that prohibition applies not only to national taxes which exhibit the essential characteristics of VAT but to all national taxes which exhibit the essential characteristics of a turnover tax and which jeopardise the functioning of the common VAT system by distorting the conditions of competition. This applies to the Hungarian special tax, even if it is assessed on the basis of total annual turnover.

The opinion of the Advocate General ist not binding for the ECJ.

READ MORE *(click to open):*

Press release: **EN FR DE CS EL ES HU IT SK**

Opinion of Advocate-General Kokott: **all EU languages**

ECJ decides on VAT treatment of outfitting and furnishing of an apartment in turn for free occupation

On 26 September 2013, the European Court of Justice rendered its judgment in case C-283/12, Serebryannay Vek, upon reference for a preliminary ruling by the Administrative Court of Varna/Bulgaria. According to the ECJ, a supply of services to fit out and furnish an apartment must be regarded as having been carried out for remuneration if, under a contract con-

cluded with the owner of that apartment, the supplier of those services, first, undertakes to carry out that supply of services at its own expense and, secondly, obtains the right to have that apartment at its disposal in order to use it for its business activities during the term of that contract, without being required to pay rent, whereas the owner recovers the improved apartment at the end of that contract.

READ MORE *(click to open):*

Judgment: **all EU languages**

Commission refers Poland to Court over reduced VAT rate for medical and fire protection goods

On 26 September 2013, the European Commission decided to refer Poland to the European Court of Justice for the application of a reduced VAT rate to general medical equipment and pharmaceutical products. Under the EU VAT Directive, application of the reduced VAT rate for medical equipment and other appliances is subject to conditions which, as the Commission states, have not been met by Polish law. Fire protection goods are not even included on the list for which a reduced rate may be applied.

READ MORE *(click to open):*

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

Commission requests Romania to change its VAT refund practice

On 26 September 2013, the European Commission formally requested Romania to change its administrative practice of refunding VAT. Almost all VAT refunds claims are systematically settled with unreasonable delays, sometimes taking over 180 days. This practice is not in line with EU VAT rules which foresee that VAT should be refunded swiftly so as not to create a burden for taxpayers. Even if member states have a certain margin of manoeuver in determining refund conditions, Romanian taxpayers bear the burden of VAT for too long as a result of the current delays.

The request of the Commission takes the form of a reasoned opinion (the second stage of an infringement procedure). In the absence of a satisfactory response within two months, the Commission may refer Romania to the European Court of Justice.

READ MORE *(click to open):*

Press release, September infringement package: **EN** (most EU languages available)

Commission publishes study on VAT gap

On 19 September 2013, the European Commission published a study estimating that €193 billion in VAT revenues (1.5% of GDP) was lost due to non-compliance or non-collection in 2011 throughout the EU. The study provides detailed data from 26 Member States between 2000 and 2011.

The VAT Gap is the difference between the expected VAT revenue and VAT actually collected by national authorities. While non-compliance is certainly an important contributor to this revenue shortfall, the VAT Gap is not only due to fraud. Unpaid VAT also results from bankruptcies and insolvencies, statistical errors, delayed payments and legal avoidance, amongst other things.

The Commission considers that some important steps have already been achieved with the new measures to facilitate electronic invoicing and special provisions for small businesses that apply as of 2013 and the adoption of the Quick Reaction Mechanism in June 2013, allowing Member States to react more swiftly and effectively to sudden, large-scale cases of VAT fraud. As a next step, the Commission announces the imminent proposal for a standard VAT declaration form for the entire EU. As of 1 January 2015, a One Stop Shop will enter into force for e-services and telecoms businesses, which will simplify VAT procedures for these businesses and enable them to file a single VAT return for their activities across the EU. The Commission´s report also suggests that complicated tax systems with multiple rates are main contributors to non-compliance and repeats its call to member states to broaden national tax bases and to limit tax exemptions and reductions.

READ MORE *(click to open):*

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

Full study: **EN**

INDIRECT TAX

OECD publishes comments on new draft elements of OECD International VAT/GST Guidelines

On 5 August 2013, the OECD published the 31 responses received to its public consultation on four new draft elements of the OECD International VAT/GST Guidelines. The CFE had commented in May 2013 by submitting Opinion Statement FC 3/2013.

READ MORE *(click to open):*

Comments received: **EN**

CFE Opinion Statement FC 3/2013: **EN**

OECD Global Forum on VAT to meet again on 17/18 April 2014

The OECD has issued a "save the date" flyer for the next meeting of the Global Forum on VAT in Tokyo.

READ MORE *(click to open):*

Flyer: **EN**

OTHER TAX POLICY

CFE publishes National Reports on tax law changes in 18 European countries

Following its September Fiscal Committee meeting in Saint Petersburg, the CFE has published its National Reports in taxation, including changes to tax law in 18 European countries since March 2013.

READ MORE *(click to open):*

National Reports September 2013, Taxation: **EN**

G20 commit to automatic information exchange and support BEPS

On 6 September 2013, the G20 leaders, at their meeting in Saint Petersburg, committed to introducing automatic exchange of tax information between G20 countries as of late 2015. In July 2013, the OECD had announced (see CFE European Tax & Professional Law Report July 2013) the development of a single global standard for multilateral and bilateral automatic exchange of information between tax authorities. This new standard (included in a Model Competent Authority Agreement) shall be presented at the G20 Finance Ministers and Central Bank Governors' meeting in February 2014; work on technicalities shall be completed in the course of 2014.

Moreover, the G20 leaders expressed their support for the OECD Action Plan on Base Erosion and Profit Shifting presented in July 2013 (BEPS; see **CFE European Tax & Professional Law Report July 2013**). It should be noted that the BEPS Action Plan does not yet contain concrete proposals.

On 27 August 2013, China had signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, bringing the number of signatories to 56, including all G20 countries.

READ MORE *(click to open):*

Tax Annex to the G20 Leaders Declaration: **EN**

OECD releases Tax Policy Working Papers on tax reforms in China and post-crisis tax policy

The first paper compares the tax system in China with the tax systems in OECD countries and the tax reforms China and OECD countries have implemented in the past. The analysis focuses on those taxes and tax issues which are currently on China's reform agenda, including consumption taxes (especially the integration of the „business tax" into the VAT), environmentally-related taxes, personal income tax, fiscal relations between the central and sub-central levels of government and property taxes.

The second paper deals with the aftermath of the economic crisis, with many OECD countries still not having restored strong and sustainable economic growth. Even before the recession, OECD economies faced a range of challenges, most notably from globalisation, but also climate change, growing inequality and population ageing. Against this background, this paper discusses how tax policies have responded to fiscal and macroeconomic developments over

OTHER TAX POLICY

the past five years and longer-term structural economic developments.

READ MORE *(click to open):*

Tax Policy Working Papers:
- **Tax Policy and Tax Reform in the People's Republic of China**

- **The Tax Policy Landscape Five Years after the Crisis**

OECD releases statistics on 2012 mutual agreement procedures

The OECD has made available the 2012 statistics on the caseloads of mutual agreement procedures (MAP) of all its member countries and a number of partner economies.

The statistics show a continuous increase of MAPs from 2006 to 2012, with a slight decrease in 2010. For those countries that reported them, the average cycle times for cases completed, closed or withdrawn decreased only slightly in 2012 (25.46 months) as compared to 2011 (25.59 months). More than 90% of the reported cases are between OECD member countries'.

READ MORE *(click to open):*

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

2012 MAP statistics: **EN** **FR**

STATE AID

Corporate income tax rules as state aid - ECJ elaborates on selectivity criterion

On 18 July 2013, the European Court of Justice elaborated in preliminary ruling case C-6/12, P Oy, in which circumstances a corporate income tax provision on loss offsetting could qualify as state aid. In the case, the Finnish law provided for the possibility to offset losses from previous years unless there was a change of ownership. The law also provided for the possibility to grant individual exemption. The question was whether such an authorisation has to be considered selective, selectivity being an element of the concept of state aid in the TFEU.

According to the Court, it must first be established whether the principle that losses can be offset or the rule that such offset is not possible in case of changes of ownership is to be considered the "normal" case. If the exemption is to be seen as the exception, it can be justified if it is based on reasons inherent in the tax regime itself and the degree of latitude of the authorities is restricted to establishing whether the conditions are met (for example, whether the change of ownership constitutes a risk of tax fraud). However, if authorities have discretion to take account of other aspects unrelated to that tax regime (like maintaining employment), the measure will have to be considered selective.

The Court did not find itself in the position to reach a conclusion on the Finnish tax rule but there are indications that the exemption at issue belongs to the latter category. The case will also be of interest for Germany where the European Commission had found a German corporate income tax rule, allowing a generous loss offsetting for ailing companies in the economic crisis (Sanierungsklausel), to contravene EU state aid rules.

READ MORE *(click to open):*

Judgment and Advocate General opinion: **EN** (all EU languages)

CUSTOMS

Update of the Union Customs Code

On 26/27 September 2013, the EU Council adopted a recast version of the Union Customs Code. The Code contains general rules and procedures which ensure the implementation of tariff and other common policy measures introduced at Union level in connection with trade in goods between the Union and countries or territories outside the customs

territory of the Union. The update has become necessary to adapt the Customs Code to the "Lisbon" TFEU Treaty. Furthermore, it will promote the use of electronic procedures and a more uniform application of legislation during customs control at the EU's external borders. The European Parliament voted its approval of the new Union Customs Code on 11 September 2013.

CUSTOMS

READ MORE *(click to open):*

Press release in **FR** (p.15)

Adopted text: **EN**

Statements by Austria, Croatia, Cyprus and Germany: **EN**

ACCOUNTING

ECJ: Penalty for non-disclosure of accounting documents may be imposed without prior notice and opportunity to comment

On 26 September 2013, the European Court of Justice decided in case C-418/11, Texdata Software, in a preliminary ruling case upon reference from the Higher Regional Court of Innsbruck/Austria that national legislation may provide that, where the statutory nine-month period for disclosing accounting documents is exceeded, a minimum periodic penalty of € 700 is to be imposed immediately on the capital company whose branch is located in the member state concerned, without prior notice and without the company first being given an opportunity to state its views on the alleged breach of the disclosure obligation. This is neither prohibited by the EU fundamental freedoms, the principles of effective judicial protection and respect for the rights of the defence nor by EU secondary law.

READ MORE *(click to open):*

Judgment and Advocate-General opinion: **all EU languages**

Commission requests Romania to change accounting rules

On 26 September 2013, the European Commission has requested Romania to align its rules on valuation and accounting of purchased debt claims with EU law. According to EU law, as a general rule, items shown in the annual accounts shall be valued using a method based on the principle of purchase price or production costs. Under Romanian accounting legislation, transferred debt claims are to be shown using their nominal value in the books and records of the transferee. EU law does not provide for any derogation which permits the use of the nominal value of purchased debt claims for accounting purposes. The request takes the form of a reasoned opinion, leaving Romanian authorities two months time to notify measures taken to comply with EU law; otherwise, the Commission may refer the matter to the European Court of Justice.

READ MORE *(click to open):*

Press release, September infringement package: **EN** (most EU languages available)

EVENTS

Commission to organise two public conferences on VAT and tax expenditures

The European Commission DG TaxUD will host its "Brussels Tax Forum" on "an efficient VAT system" on 18 November 2013. Participation to the event is free.

Also DG ECFIN will organise a workshop on taxation, on 23 October 2013, on "the use of tax expenditures in times of fiscal consolidation". Registration to this event is already closed.

READ MORE *(click to open):*

Brussels Tax Forum; programme, further information and registration: **EN, DE, FR**

ECFIN workshop programme: **EN**

Universities of Luxembourg and Linz conference on "Landmark decisions in direct tax jurisprudence"

The conference on 23 January 2014 will explore the history, impact, and potential for further development of the ECJ´s (EU Court of Justice) and the EFTA Court's landmark decisions relating to direct taxation.

EVENTS

The presentations, to be delivered by leading practitioners and academics in the field, many of which are members in the CFE´s ECJ Task Force which regularly comments on important ECJ decisions in the field of tax , will explain the background, legal framework, and arguments leading up to the various decisions as well as their impact on subsequent Court decisions. Attention will be paid to the Court's initial reasoning and any shading or nuancing thereof in the case law built thereon. Moreover, each presentation will explore the strengths and weaknesses of the Courts' reasoning and potential developments. Finally, additional commentary will be offered by current or former CJEU and EFTA Court Judges, Advocates General, members of the EU Commission, and members of domestic courts.

READ MORE *(click to open):*

Programme: **EN**

CROSS-BORDER SERVICES / PROFESSIONAL QUALIFICATIONS

Commission comments on restrictions to cross-border services and announces action plan for screening qualification requirements

On 2 October 2013, the European Commission published a staff working document concluding the "peer review" process started in 2012 in five sectors, including tax advisers and dealing with legal form and ownership requirements for professional firms and with fee regulation. On the same day, a communication on evaluating professional qualification requirements was issued, drawing up a timetable for the listing, screening and legal analysis of such requirements.

In the staff working document, the Commission expresses its dissatisfaction that member states have chosen to maintain many restrictions to cross-border services, despite the Commission´s repeated calls over the past years to abolish such restrictions, suggesting that these member states have not properly undertaken the proportionality screening of national legislation. Special emphasis of the Commission has been put on the accumulation of different types of restrictions. While generally advocating a lowering of restrictions, the Commission recognises that there cannot be a one-size-fits-all approach across professions and countries.

The Commission suggests that instead of regulating access to professions, member states should consider requiring certification only for certain sensitive activities; such certification could then be obtained by members of several professions.

To minimise the effect of legal form or ownership requirements on cross-border mobility, the Commission considers two options:

- these would not apply to subsidiaries of foreign firms;

- these could apply only to those firms that use a particular professional title (instead of all firms that exercise the activity); it would still be possible to reserve the exercise of the activity to persons who have the relevant qualification.

Both possibilities would enable a foreign firm to open a subsidiary without having to change its own structure.

The Commission favours rules reserving voting rights to members of the profession over rules relating to ownership or management of firms. It appears that the Commission considers requirements that reserve more than 51% to members of the profession

CROSS-BORDER SERVICES / PROFESSIONAL QUALIFICATIONS

excessive. The Commission also remarks that such requirements significantly restrict multi-professional firms and services. Rules on incompatible activities are also given preference over shareholding requirements.

As before, the Commission opposes fixed, maximum and minimum tariffs, questioning their added value for service quality.

The Communication includes a timetable on follow-up measures until the first half of 2016, linking screening of national legislation and mutual evaluation with the European semester recommendations and asking member states to draw up national action plans on reform of professional qualification requirements.

READ MORE *(click to open):*

Communication COM(2013)676 (**link**) "on evaluating national regulations on access to professions", and
Staff working document SWD(2013)402 (**link**) "on the outcome of the peer review on legal form, shareholding and tariff requirements under the Services Directive".

CROSS-BORDER SERVICES

MEPs side with Commission on removing restrictions to cross-border services

On 11 September 2013, the European Parliament plenary adopted a non-legislative report "on the Internal Market for Services: State of Play and Next Steps", initiated by conservative Swedish MEP Anna Maria Corazza Bildt. The report supports the Commission in its efforts to remove restrictions to cross-border services. Although recalling that the EU Services Directive does not force the liberalisation of services, the report regrets that member states, in many cases are "inappropriately invoking overriding reasons of public interest for the sole purpose of protecting and favouring their domestic market", naming in particular burdensome legal form and shareholding requirements and fixed tariffs. Strong support is expressed for the Commission´s "zero tolerance policy" towards unjustified restrictions. The MEPs encourage the upcoming screening and evaluation process on professional qualifications (to be introduced with the revised Professional Qualifications Directive), the development of voluntary European services standards and solutions for cross-border professional indemnity insurance coverage, to be found by the stakeholders, through dialogue..

READ MORE *(click to open):*

Adopted text: **EN** (all EU languages)

ECJ rules on applicability of fee and advertising restrictions to temporary cross-border services

The European Court of Justice has ruled on 12 September 2013 in case C-475/11, Konstantinides, that professional rules on fees and advertisement are not to be considered rules "directly linked to professional qualifications" (Art.5 (3) Professional Qualifications Directive) that may be imposed on professionals from other member states who practice temporarily in a member state where the profession is regulated. Restrictions not directly linked to professional qualifications fall under Art.16 of the EU Services Directive which does not allow a justification based on the protection of the services recipient, which is the ground usually invoked for advertising and fee restrictions, by those countries that have such restrictions. The ECJ did not have to comment on Art.16 Services Directive, as the case concerned doctors who do not fall under the scope of the Services Directive and the facts of the case occurred before its entering into force.

READ MORE *(click to open):*

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

CFE comments on cross-border professional indemnity insurance

In August 2013, the CFE, responding to a public consultation of the European Commission, commented on the availability of professional indemnity insurance (PII) cover as an obstacle for cross-border tax services. The Commission is currently seeking solutions to overcome the problem that insurance companies do not offer cross-border cover while some member

CROSS-BORDER SERVICES

states require such cover for temporary cross-border services. The CFE argues that tax advisers should take out PII, whether practicing cross-border or not. Instead of abolishing existing insurance requirements which would be detrimental to the position of the client and instead of a insurance solution at European level, CFE would favour framework contracts negotiated between professional organisations and insurance companies at national level. These can take into account the particularities of the profession in each country. Indeed in at least 7 CFE countries, good examples of such contracts exist.

READ MORE *(click to open):*

CFE Opinion Statement PAC 3/2013: **EN**

PROFESSIONAL LAW

CFE publishes National Reports on changes in tax advisers´ professional affairs in 9 European countries

Following its September Professional Affairs Committee meeting in Saint Petersburg, the CFE has published its National Reports in professional affairs, including changes in 9 European countries since September 2012.

READ MORE *(click to open):*

National Reports September 2013, Professional Affairs: **EN**

ECJ: Fee rules enacted by professional body with mandatory membership may violate antitrust rules

On 18 July 2013, the ECJ decided in case C-136/12 that rules by a professional body with mandatory membership which establish as criteria for determining the remuneration of geologists, in addition to the quality and scale of the work to be performed, the dignity of the profession, constitute a decision by an association of undertakings within the meaning of Article 101(1) TFEU which may have the effect of restricting competition within the internal market. The ECJ leaves to the referring Italian court to establish whether such restrictive effect is produced in the present case and to what extent the rules of that code, in particular the consideration of the dignity of the profession, are necessary in the interest of the service recipient. This judgment is a continuation of the ECJ´s Wouters (case C-309/99) case law.

READ MORE *(click to open):*

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

EVENTS

European Commission conference: A single market for lawyers

On 28 October 2013, the European Commission´s Directorate-General Internal Market and Services will host a conference titled: “A single market for lawyers - valuing achievements, tackling remaining challenges”. The conference follows the publication of a study of the European Commission and Maastricht University (see **CFE European Tax & Professional Law Report May 2013**).

READ MORE *(click to open):*

Draft programme: **EN**

Registration: **EN** (free of charge)

CFE PUBLICATIONS

European Professional Affairs Handbook for Tax Advisers

The second edition of the CFE´s European Handbook on professional affairs issues for tax advisers was published in March 2013.

The completely revised publication contains the requirements for providing professional tax services and the relevant contact points in 23 European countries, the impacts of EU policy, legislation and case-law on professional regulation, facts on how the tax

CFE PUBLICATIONS

profession is organised across Europe and current developments and trends in professional affairs.

READ MORE *(click to open):*

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A Model Taxpayer Charter

The draft Model Taxpayer Charter presented in May 2013 by CFE, AOTCA and STEP (see **CFE European Tax & Professional Law Report May 2013**), is now available for download. The full publication including the study on the status quo of taxpayer rights and responsibilities on 37 countries has been made available at a reduced price of € 30 (including shipping) for the members of CFE member organisations.

READ MORE *(click to open):*

Text of the draft Model Taxpayer Charter: **EN**

Dedicated CFE website: **EN**

If interested, please contact the CFE Office in Brussels: **Order**

CONFEDERATION FISCALE EUROPEENNE

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