



CFE NEWS

Register now: CFE Forum 2014 Policies for a sustainable tax future

Thursday 27 March 2014, in Brussels

As Europe is struggling with cross-border tax evasion and tax avoidance, it seems time to put an end to blaming multinationals and financial markets and start moving forward with a well-designed plan to tackle the problem at the EU and global level. It is vital that the right questions are addressed in order to close the existing gaps, mismatches and loopholes of the EU tax systems and to find alternative sources of revenue. In doing so, the EU has to align with the other key global players to preserve its competitiveness in the field of taxation. By addressing the OECD's "Base Erosion and Profit Shifting" (BEPS) Action Plan and the EU proposal for a Financial Transaction Tax, the CFE Forum 2014 will consider two blueprints which will have a major impact on treasuries, and, most of all, on businesses.

Titled "BEPS: Better policies in the EU context?", the first three panels of this one-day conference will forecast what EU tax systems will look like in the near future, after completion of the OECD BEPS project. Will BEPS challenge some of the fundamental principles of EU taxation? What will be the inevitable implications for companies operating in the EU and beyond in terms of competitiveness, compliance and responsibility? Speakers from the European Commission, as well as business and academics will discuss these questions together with the audience.

The last panel will deal with the EU Financial Transaction Tax. Speakers from the European Commission and from two countries that have not been supporting the proposal will discuss feasibility and expectations of this envisaged tax. Moreover, the last panel will provide an update on recent developments in VAT policy.

READ MORE (click to open):

CFE website: [EN](#)

DIRECT TAX

OECD consults on transfer pricing documentation and country-by- country reporting

On 30 January 2014, the OECD has opened a public consultation on a review of the existing transfer pricing documentation rules and the development of a template for country-by-country reporting to tax administrations of income, taxes and economic activity. These projects form part of the OECD BEPS (base erosion and profit shifting) Action Plan, presented on 19 July 2013. An initial draft of revised guidance on transfer pricing documentation and country-by-country reporting was released for comment by interested parties until 23 February 2014.

READ MORE (click to open):

Draft of revised guidance on transfer pricing documentation and country-by-country reporting: [EN](#)

More information on OECD website: [EN](#) (FR available)

Transfer pricing – compensating adjustments

The EU's Joint Transfer Pricing Forum has published a Report on Compensating Adjustments. EU Member states have different practices with respect to compensating adjustments. The report provides practical guidance on avoiding double taxation and double non-taxation in the application of compensating adjustments in the taxpayer's accounts and transfer pricing documentation.

READ MORE (click to open):

BEPS/G20 Project: [EN](#)

Report on Compensating Adjustments: [EN](#)

Joint Transfer Pricing Forum website: [EN](#) (FR, DE available)

CC(C)TB – Lithuanian compromise text public

A compromise text for a EU CC(C)TB (common (consolidated) corporate tax base) proposed by the Lithuanian EU Council presidency in October 2013 has been made publically available. The text is the current basis for technical discussions in the EU Council which will go on during the Greek Council presidency. Due to limited progress, the element of consolidation has not been included in the text.

READ MORE (click to open):

Proposed legislative text: [EN](#)

Commentary: [EN](#)

UN open consultation on Transfer Pricing Manual for Developing Countries

On 16 January 2014, the United Nations' Committee of Experts on International Cooperation in Tax Matters has opened a public consultation requesting input to be considered when updating the UN Practical Manual on Transfer Pricing for Developing Countries, with regard in particular to the issue of associated enterprises, to draft additional chapters on intra-group services and management fees as well as intangibles. Input should be submitted no later than 28 February 2014.

READ MORE (click to open):

Letter: [EN](#)

UN Transfer Pricing Manual for Developing Countries: [EN](#)

Commission refers Portugal to Court over exit taxation for individuals

On 23 January 2014, the European Commission decided to take Portugal to the EU Court of Justice for discriminating against taxpayers who cease to be tax residents. The Commission considers such provisions to be incompatible with their right to free move-

ment set out in the Treaties.

Under Portuguese law, taxpayers no longer resident in Portugal are subject to immediate taxation in case of exchange of shares. Taxpayers are also taxed immediately in case of transfer to a company located abroad of assets and liabilities related to the exercise of an economic or professional activity.

The Commission considers that such immediate taxation penalises those persons who decide to leave Portugal or transfer assets abroad, by introducing less favourable treatment for them in comparison to those who remain in the country or transfer assets to a resident company. Taxpayers who cease to be resident in Portugal are taxed on the value of their assets at this given moment regardless of the future evolution of the value of their assets, while taxpayers who remain resident in Portugal would be taxed only once the assets would be realised on their value at the time of realisation.

READ MORE (click to open):

Press release: [EN](#) (FR DE PT available)

Commission asks Belgium to end the discrimination of credit institutions established in other member states

The Commission has requested Belgium to amend its law on transactions in certain securities. This law only allows credit institutions established in Belgium to operate settlement systems with tax clearing. The settlement systems in question are those that permit the holding and transfer of fixed-interest securities. The Commission sees no valid justification for excluding credit institutions established in other Member States. Belgium could subject them to the same requirements as Belgian institutions and use the available Community instruments on administrative cooperation between tax administrations to ensure tax compliance. The Commission therefore considers that the exclusion of credit institutions established in other EU Member States goes against the EU freedom to provide services. The request is in the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer Belgium to the EU Court of Justice.

READ MORE (click to open):

Press release : Infringement package: [EN](#) (most EU languages)

DIRECT TAX

Commission requests Portugal to take into account depreciation in taxing second-hand vehicles

The Commission has formally requested Portugal to amend its legislation on the taxation of imported second-hand vehicles. The calculation of the taxable value of second-hand vehicles introduced into Portugal from another member state does not take into account the real value of the vehicle. No depreciation is taken into consideration before the vehicle is one year old and no further depreciation is taken into account of in the case of vehicles older than five years. This may result in higher taxation than that applied to domestically purchased vehicles. The Commission's request 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 Portugal to the EU Court of Justice.

READ MORE *(click to open)*:

Press release: Infringement package: [EN](#) (most EU languages)

Artificial avoidance of PE status: OECD receives one comment

On 22 October 2013, the OECD invited interested parties to send a short description of strategies that might be considered to result in the artificial avoidance of PE status in relation to the OECD's BEPS (base erosion and profit shifting) Action Plan (see [CFE European Tax & Professional Law Report October 2013](#)). The organisation has now published the one response received.

READ MORE *(click to open)*:

Comment received: [EN](#)

CFE comments on changes to the OECD Model Convention

The CFE commented on the OECD's discussion draft on technical changes to the Model Tax Convention, published in November 2013 (see [CFE European Tax & Professional Law Report November 2013](#)).

READ MORE *(click to open)*:

CFE Opinion Statement FC 1/2014: [EN](#)

EP rapporteur proposes minimum taxation in Parent-Subsidiary Directive

On 28 January 2014, the responsible rapporteur in the European Parliament's Economic and Monetary Affairs (ECON) Committee, MEP Mojca Kleva Kekuš (S&D, Slovenia) has presented her draft report, proposing to introduce a minimum taxation of 75% of the EU countries' average corporate tax rate and narrowing the criteria for subsidiaries to fall under the Directive by requiring a minimum shareholding of 15% (instead of currently 10%). The votes of the ECON and EP plenary are scheduled for 18 March and 16 April 2014 respectively. As in all tax dossiers, the opinion of the European Parliament is not binding the Council which will have to vote unanimously.

READ MORE *(click to open)*:

Draft ECON report: [EN](#) (MT available, more languages to follow)

INDIRECT TAX

VAT cross-border rulings pilot project extended until end of 2014

On 22 January 2014, the European Commission has confirmed earlier announcements that the EU VAT Forum's pilot project aimed at improving legal certainty for business, in particular SMEs, in their cross border VAT transactions would be extended (see [CFE European Tax & Professional Law Report November 2013](#)). The extension will be for another year, until the end of 2014. Finland recently joined as the 14th participating EU member state.

INDIRECT TAX

READ MORE *(click to open)*:

Background information: [EN](#)

Press notice of 22 January 2014: [EN](#) (search for word "pilot")

Commission prolongs public consultation on public bodies and public interest VAT exemptions

The European Commission has prolonged the period of its public consultation on VAT for public bodies and exemptions in the public interest until 25 April 2014. At the same time, it has provided the consultation paper in all EU languages.

READ MORE *(click to open)*:

Consultation website: [EN](#) (DE, FR available)

Consultation paper: [All EU languages](#)

VAT rates in the EU

On 13 January 2014, the European Commission published its overview on the VAT rates applicable in the EU as of 1 January 2014, containing the products and services on which specific rates are applied, geographic particularities and the evolution of VAT rates.

READ MORE *(click to open)*:

VAT rates in the EU: [EN](#) [FR](#) [DE](#)

ECJ rules on the VAT taxable amount in case of price reductions granted to the consumer by an intermediary

On 16 January 2014, the European Court of Justice decided in the preliminary ruling case C 300/12, Ibe-

ro Tours, upon request of the German Federal Court of Finance, that the principles established in Case C-317/94, Elida Gibbs, concerning the determination of the taxable amount for VAT purposes do not apply when a travel agent, acting as an intermediary, grants to the final consumer, on the travel agent's own initiative and at his own expense, a price reduction on the principal service provided by the tour operator. In Elida Gibbs, the ECJ had held that when a manufacturer of a product who, having no contractual relationship with the final consumer but being the first link in a chain of transactions which ends with that final consumer, grants the final consumer a price reduction using discount coupons received by retailers and reimbursed by the manufacturer to those retailers, the taxable amount for VAT purposes must be reduced by that reduction.

READ MORE *(click to open)*:

Judgment: [all EU languages](#)

Advocate-General Opinion: [all EU languages](#)

OTHER TAX POLICY

PWC publishes report on total tax contribution of largest UK companies

PWC has published a report displaying the total tax contribution of the Top 100 UK companies to the country's budget, plus data on their wider economic impact like investment, employment and research and development in the UK. Most of the largest UK businesses chose to participate in the survey.

READ MORE *(click to open)*:

Report: [EN](#)

OECD BEPS webcast available online

The OECD have provided a recording of its Centre for Tax Policy and Administration's webcast „BEPS Action Plan: Update on 2014 Deliverables“, held on 23 January 2014.

OTHER TAX POLICY

READ MORE (click to open):

Webcast: [EN](#)

Digital economy taxation: Report of second expert group meeting

The European Commission has published the summary report of the second meeting of the Expert Group on Taxation of the Digital Economy, held on 14/15 January 2014. The group discussed VAT on electronic services, in particular the introduction of the destination principle and a one-stop-shop system for these services (as well as for telecommunications and broadcasting) as of 2015 and a possible extension of this regime on further services. Further discussion concerned the business models and value drivers of search engines and other e-service providers. The next meeting was scheduled for 13 and 14 March 2014.

READ MORE (click to open):

Summary report: [EN](#)

OECD publishes comments received on the tax challenges of the digital economy

The OECD has published the 17 comments received upon its request for input on the tax challenges of the digital economy (see [CFE European Tax & Professional Law Report November 2013](#)). The UK's Chartered Institute of Taxation (CIOT) was the only CFE member organisation to comment.

READ MORE (click to open):

Request for input: [EN](#)

Comments received: [EN](#)

Ecofin report on tax issues 2013/2

The report on tax issues of the EU Ecofin Council of 12 December 2013 has been made public. The text prepared for the European Council summarises the progress reached in the most important EU tax legislative and policy projects during the Lithuanian EU Council presidency.

READ MORE (click to open):

Report on Tax issues December 2013: [EN](#)

STATE AID

The notion of state aid – Commission opens public consultation

On 17 January 2014, the European Commission has opened a public consultation on its draft notice on the notion of state aid. This notice is an integral part of the Commission's State aid modernisation programme. The notice intends to provide practical guidance in order to identify state aid measures which have to be notified to and approved by the Commission before being lawfully implemented. In doing so, the draft notice aims to cover all the constitutive elements of the notion of state aid: existence of an undertaking, imputability of the measure to the State, financing through State resources, grant of an advantage, selectivity and effect on trade and competition. Comments are invited by 14 March 2014.

READ MORE (click to open):

Website: [EN](#)

Draft Commission notice on the notion of state aid: [EN](#)

ACCOUNTING

Disclosure of non-financial information – consolidated version of JURI vote

On 17 December 2013, the European Parliament's

ACCOUNTING

Legal Affairs Committee voted in favour of reporting of corporate social responsibility information by large EU companies, but against extending publication to country-by-country information on tax payments (see [CFE European Tax & Professional Law Report December 2013](#)). The final consolidated report of the EP Legal Affairs Committee is now available. The EP plenary vote is scheduled for 15 April 2014.

READ MORE (click to open):

Report as adopted by JURI: [EN](#)

PROFESSIONAL QUALIFICATIONS

Relevant professional knowledge and skills may also be obtained abroad - Commission asks Poland to revise criteria for legal state exam candidates

On 23 January 2014, the European Commission has asked Poland to respect EU rules on recognition of professional qualifications for lawyers. The Polish Lawyers' Act deals with exemptions from the obligation to take the Polish state exam for practicing as a lawyer. It prevents the competent authority from taking into account experience which may have led to the acquisition of relevant professional knowledge and skills (including in Polish law), in as far as this experience is not acquired under a contract with a firm established under Polish law. The Commission holds that the assessment criteria should only concern the knowledge and experience acquired by a candidate in a traineeship. This does not depend on the legal relation of the applicant with the law firm where the experience was acquired and that firm's country of establishment. The Commission's request takes the form of a reasoned opinion. If Poland fails to act within two months, the Commission may refer the case to the EU Court of Justice.

READ MORE (click to open):

Press release: Infringement package ([most EU languages](#))

PROFESSIONAL LAW

ECtHR : Lawyer must be able to also practice as a doctor

On 14 January 2014, the European Court of Human Rights (ECtHR) in Strasbourg decided in case 1944/10, Mateescu, that professional regulations in Romania could not prohibit a person from practicing both as a lawyer and a doctor. The Court based his findings on the applicant's right to privacy (Article 8 of the European Convention of Human Rights) which also contains a right to personal development, protecting the individual against arbitrary interference by public authorities.

According to Romanian law, "occupations affecting

PROFESSIONAL LAW

the dignity and independence of the profession or good morals” are considered incompatible with the activity of lawyers, while the law does not contain any particular reference to medical practice. Moreover, there was no clear administrative practice on this question.

The ECtHR considers that in such circumstances, it has been unforeseeable for the applicant that he would not be allowed to practise as a doctor and also as a lawyer and therefore, the interference was not in accordance with the law.

The concept of incompatible activities for tax advisers exists in various European countries.

[READ MORE \(click to open\):](#)

Judgment: [EN](#)

ANTI MONEY LAUNDERING

CFE comments on EP amendments to AML Directive proposal

On 15 January 2014, the CFE has submitted its second Opinion Statement on the proposal for a revision of the EU Anti Money Laundering Directive, commenting on the changes proposed by members of the European Parliament’s Civil Liberties (...) and Economic (...) Affairs Committees (see also [CFE European Tax & Professional Law Report December 2013](#)). The CFE strongly opposes the inclusion of elements to fight tax avoidance in the Directive, stressing that the Directive is a tool only to fight illegal and not politically undesired activity and warning against the uncertainty such move would bring for practitioners. CFE maintains its reservations towards the anticipated benefits of a public beneficial ownership register. The joint Committees’ vote has been rescheduled from 22 January to 13 February.

[READ MORE \(click to open\):](#)

CFE Opinion Statement PAC 1/2014: [EN](#)

AUDIT

EP Committee approves audit reform compromise text

On 21 January 2014, the European Parliament’s Legal Affairs Committee (JURI) has adopted the compromise texts for a revised EU Audit Directive and new Audit Regulation. The two compromise texts which had been negotiated in December 2013 (see also [CFE European Tax & Professional Law Report December 2013](#)) are now public.

A provision relevant for tax advisers was the planned prohibition of certain tax advisory and other black-listed services by the audit firm to the audited entity, if this entity is a public interest entity (Art.10). The compromise now allows member states to deviate from this prohibition regarding some of these services if they are immaterial or have no direct effect on the audited financial statements (this should however not apply to “aggressive tax planning”), provided that the independence of the auditor is guaranteed.

The prohibition against member states to maintain ownership requirements for audit firms has been dropped as well. As tax and audit services may in most member states be provided by the same firm, such prohibition could have impacted on member states where ownership requirements for tax firms exist.

The EP’s plenary vote is due to be held in March or April 2014. Any changes to the agreed compromise text are extremely unlikely.

[READ MORE \(click to open\):](#)

Compromise texts:

Directive: [EN](#)

Regulation: [EN](#)

IMPRESSUM

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