



CFE EVENTS

CFE PAC Conference “Tax Transparency - How to make it work?”

The 7th CFE Professional Affairs Conference will deal with three aspects of tax transparency, currently discussed at EU and OECD level: 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.

READ MORE (click to open):

More information / programme / registration: [EN](#)

DIRECT TAX

Commission asks Germany to stop discrimination of legacies to foreign charities

On 16 October 2014, the European Commission has asked Germany to amend its inheritance tax legislation with regard to legacies to charities in other EU or EEA states. The German legislation treats legacies to charities established in other EU/EEA countries less favourably than legacies to certain charities established in Germany, as domestic charities are granted an exemption from inheritance tax but similar charities established in other EU/EEA countries may only enjoy this exemption if their state of residence grants an equivalent or reciprocal exemption to comparable German charities. The Commission sees no justification for such discrimination. The request takes the form of a Reasoned Opinion. If Germany does not comply within two months, the Commission may refer the country to the EU Court of Justice.

READ MORE (click to open):

October infringement package: [EN](#) (all EU languages)

Commission asks Romania to stop the discriminatory treatment of foreign legal entities

On 16 October 2014, the European Commission has requested Romania to amend its rules on the taxation of interest income, arguing that they restrict the free provision of services and the free movement of capital. Currently, resident legal entities can deduct the business expenses related to generating interest income. However, legal entities established in another EU/EEA state and without a permanent establishment in Romania cannot benefit from such a deduction, and are thus taxed more heavily on their gross interest income obtained directly from Romania. The Commission sees no valid justification for this different tax treatment, and considers it to be discriminatory and a restriction to the free movement of 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 Romania to the EU Court of Justice.

READ MORE (click to open):

October infringement package: [EN](#) (all EU languages)

Commission takes Belgium to CJEU for discriminatory taxation of collective investment undertakings

On 16 October 2014, the European Commission decided to refer Belgium to the EU Court of Justice for discriminatory taxation of collective investment undertakings (CIUs) established in other member states or EEA countries. In Belgium, the rate of annual tax on certain CIUs governed by foreign law established in other EU/EEA states is higher than the rate applied to similar CIUs established in Belgium. This concerns CIUs 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.

READ MORE (click to open):

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

READ MORE (click to open):

- News release: [EN](#) (FR available)
- Discussion draft: [EN](#), [FR](#), [ES](#)

CJEU dismisses German provision on flat-rate taxation of income from investment funds

On 9 October 2014, the EU Court of Justice (CJEU) rendered its judgment in the preliminary ruling case C-326/12, van Caster, on the German rules on taxation of income from investment funds, dismissing the provision that the failure by a non-resident investment fund to comply with the obligations to communicate and publish certain information required by that legislation, which are applicable without distinction to resident and non-resident investment funds alike, will result in the flat-rate taxation of the income which the taxpayer earns from that investment fund, since that legislation does not allow the taxpayer to provide evidence or information that could prove the actual size of that income.

READ MORE (click to open):

- Judgment: [EN](#) (all EU languages)
- Opinion of Advocate-General Wathelet: [EN](#) (all EU languages)

BEPS: OECD proposes modifications to Transfer Pricing Guidelines relating to low value-adding intra-group services

On 3 November 2014, the OECD has published a discussion draft on amending the provisions applying to low value-adding intra-group services in the Transfer Pricing Guidelines (BEPS Action 10). Excessive management fees and head office expenses are considered common types of base eroding payments. The discussion draft proposes an approach which identifies a wide category of common intra-group services commanding a very limited profit mark-up on costs, applies a consistent allocation key for all recipients, and provides greater transparency through specific reporting requirements. The draft is open for comments until 14 January 2015.

BEPS: OECD consults on artificial avoidance of PE status

On 31 October 2014, the OECD released a discussion draft on the artificial avoidance of the Permanent Establishment status (BEPS Action 7) for public consultation. The paper proposes changes to the definition of PE in the Model Tax Convention, as the

current rules on agency-PE allow contracts for the sale of goods belonging to a foreign enterprise to be negotiated and concluded in a country by the sales force of a local subsidiary of that foreign enterprise without the profits from these sales being taxable to the same extent as they would be if the sales were made by a distributor, which has led enterprises to replace arrangements under which the local subsidiary traditionally acted as a distributor by “commissionaire arrangements” with a resulting shift of profits out of the country where the sales take place without a substantive change in the functions performed in that country. Another point is that multinationals may artificially fragment their operations among multiple group entities to qualify for the exceptions to PE status for preparatory and auxiliary activities. Concerning the digital economy, the OECD is seeking to ensure that core activities cannot inappropriately benefit from the exception from PE status. Comments can be submitted until 9 January 2015.

The OECD has also updated its timetable for stakeholder consultation in the BEPS Action Plan.

READ MORE (click to open):

- Discussion draft: [EN](#)
- News release: [EN](#) (FR available)
- Updated timetable (3 November 2014): [EN](#)

INDIRECT TAX

CJEU decides on the place of supply of goods made fit for purpose in the member state of the recipient

On 2 October 2014, the EU Court of Justice (CJEU) decided on the French preliminary ruling case *Fonderie 2A* (C-446/13) on the place of supply of metal parts sold by a company in Italy to a person established in France, which the vendor has had painted by a third company in France to make them fit for purpose, before having them dispatched by that third company to the recipient. The CJEU ruled that such supplies must be deemed to be in the member state of the recipient, France.

READ MORE (click to open):

- Judgment: [EN](#) (all EU languages)
- Opinion of Advocate-General Kokott: [EN](#) (all EU languages)

Commission publishes considerations on a definitive VAT system

On 30 October 2014, the European Commission issued a staff working document setting out five options for redesigning from scratch a destination-based EU VAT system. The paper is a deliverable announced in the Commission's 2011 Communication on the future of VAT and will be followed up by a final report on the quantitative effects of each of the five options in spring 2015.

READ MORE (click to open):

- Staff working document, SWD(2014)338: [EN](#)
- Updated FAQ: [EN](#) (FR available)
- Press release: [EN](#) (FR, DE, LT available)

CJEU: Italy may not charge higher excise duties for cheap cigarettes

On 9 October 2014, the EU Court of Justice decided in the preliminary ruling case C-428/13, *Yesmoke Tobacco*, that Italy was not allowed to impose higher minimum excise duties on cigarettes whose retail price was below the price of the most commonly

sold cigarettes. Such differentiation is liable to distort competition.

READ MORE (click to open):

- Judgment: [EN](#) (all EU languages)
- Press release N° 136: [EN, ES, DE, EL, FR, IT, PT](#)

Mini-one-stop-shops: Commission informs on implementation of relevant rules into national laws

The European Commission has published information on how member states have implemented provisions of the VAT Directive that have particular relevance for the mini-one-stop-shops for EU- and non-EU providers of e-service, telecommunication and broadcasting applying as of 1 January 2015. The information mostly concerns provisions whose implementation into national law is either optional or subject to differing interpretation in member states. The Commission stresses that the information is neither to be considered final nor exhaustive. The Commission has also provided a list of national contact points.

READ MORE (click to open):

- Report: [EU](#)
- Instructions for use: [EN](#)
- National contact points: [EN](#)
- Commission e-mail address for comments: [e-mail](#)
- Information portal on the 2015 VAT changes: [EN](#)

CJEU decides on the concept of fixed establishment for services received in another member state

On 16 October 2014, the EU Court of Justice delivered its judgment in the Polish preliminary ruling case C-605/12, *Welmory*, on the concept of fixed establishment of the recipient of a supply of services, stating that a taxable person who has established his business in one member state and receives services supplied by another taxable person established in another member state, must be regarded as having a fixed establishment in that other member state if that establishment is characterised by a sufficient degree of permanence and a suitable structure in terms

of human and technical resources to enable it to receive the services supplied to it and use them for its business, which is for the referring court to ascertain (see also [CFE European Tax & Professional Law Report May 2014](#)).

READ MORE (click to open):

- Judgment: [EN](#) (All EU languages)
- Opinion by Advocate-General Kokott: [EN](#) (all EU languages)

Taxation Directive are respected. The two countries are seeking to promote a more widespread use of shore-side electricity as a less environmentally harmful way, compared to the burning of fuels on board.

READ MORE (click to open):

Concil press release: [EN](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

Commission presents VAT gap study

On 23 October 2014, the European Commission presented its data on the 2012 VAT gap, trying to assess in detail the amount of VAT that has not, but could hypothetically have been collected in the EU member states. Apart from revenue shortfalls due to fraud and non-compliance, bankruptcies and insolvencies, statistical errors and delayed payments, the Commission also includes losses due to legal avoidance. The Commission estimates that €177 billion in VAT revenues was lost. This equates to 16% of total expected VAT revenue. No data is available for Croatia and Cyprus. The study also includes updated figures for the period 2009-11, to reflect a change in the methodology used. The lowest VAT Gaps were recorded in the Netherlands (5% of expected VAT revenues), Finland (5%) and Luxembourg (6%). The largest gaps were in Romania (44%), Slovakia (39%) and Lithuania (36%). Eleven Member States decreased their VAT Gap between 2011 and 2012, while 15 saw theirs increase. Greece showed the greatest improvement, although it still has a very high VAT Gap (33%).

READ MORE (click to open):

- Press release: [EN](#) (all EU languages)
- Full study: [EN](#)

Exchange of information: 51 countries sign competent authority agreement on implementation of new global standard

On 29 October 2014, 51 countries signed a multilateral declaration on their implementation of the new G20/OECD global standard on annual automatic exchange of tax information endorsed by the G20 finance ministers in September 2014. Most jurisdictions have committed to implementing this standard on a reciprocal basis with all interested jurisdictions. Governments also agreed to require that beneficial ownership of all legal entities be available to tax authorities and exchanged with treaty partners.

READ MORE (click to open):

- Text of the declaration: [EN, FR](#)
- Explanation on OECD website: [EN](#) (FR available)
- Press release: [EN](#) (FR available)
- List of signatories: [EN](#)

Germany and Sweden may apply reduced energy tax on electricity to ships in ports

According to an EU Ecofin Council decision of 14 October 2014, Germany and Sweden may continue applying until June/July 2020 a reduced tax rate on electricity directly provided to vessels at berth in a port, provided the minimum levels set in the Energy

Council agrees on including OECD/ G20 automatic information exchange standard in EU Directive

On 14 October 2014, the EU Ecofin Council reached political agreement on amending the Directive 2011/16/EU on Administrative Cooperation in Direct Taxes to include automatic information exchange on interest, dividends and other income, as well as account balances and sales proceeds from financial assets. This brings the EU Directive in line with the new global standard on automatic exchange of informati-

on developed by the OECD on request of the G20. The proposal was made by the European Commission in June 2013 and developed subsequently to take account of the global standard presented in detail in July 2014 and endorsed by the G20 finance ministers in September. The formal adoption of the Directive will take place at one of the forthcoming Council meetings, once translation into all EU languages has been completed. The newly agreed exchange will take place as of 2017. Austria was granted the possibility to postpone the standard by an additional year. The amended Directive will provide an EU legal framework for applying the G20 standard. However, member states may already require information exchange going further than the categories listed in the current Directive, because the Directive provides that EU member states have to grant to any other member state the same more favourable conditions they grant to any third country, and a number of EU countries have bilaterally agreed further cooperation with the US, on FATCA.

READ MORE (click to open):

- Council Press release : [EN](#), [FR](#)
- European Commission FAQs: [EN](#)
[FR](#) (available)

Commission publication: Tax reforms in EU member states

The European Commission has released the publication "Tax reforms in EU member states - Tax policy challenges for economic growth and fiscal sustainability", containing, next to an overview on the tax reforms undertaken in 2013/2014, analysis on various tax policy topics such as the tax burden on labour, tax expenditures, housing taxation, debt bias and VAT. In corporate income tax, the Commission observes a general trend towards a narrowing of the tax base. Consumption taxes, on the other hand, are mostly on the increase, due to an increase of reduced rates and a broader application of the standard rate. It also includes an indicator-based assessment, showing in which areas the Commission believes that a country should change its tax policies.

READ MORE (click to open):

Report: Tax reforms in EU member states 2014:
[EN](#)

OTHER TAX POLICY

CFE Fiscal Committee reports on tax changes March – September 2014

The CFE Fiscal Committee has published its regular report on recent changes in national tax law, covering the period from March until September 2014 in 11 European countries (Belgium, Czech Republic, France, Germany, Italy, Romania, Slovakia, Slovenia, Switzerland, Ukraine and UK).

READ MORE (click to open):

Fiscal Committee National Reports March-September 2014: [EN](#)

STATE AID

"Luxembourg leaks": journalists publish confidential tax rulings / state aid investigations concerning Amazon

On 5 November 2014, the International Consortium of Investigative Journalists (ICIJ) has published 548 comfort letters issued from 2002 to 2010 by the Luxembourg tax authorities to 343 multinational companies including, e.g., FedEx, Ikea and Pepsi. Most of the rulings in the stash of documents were approved between 2008 and 2010. ICIJ contents that these comfort letters allowed the companies involved to shift profits to other jurisdictions and as a result of this, to pay only marginal amounts of tax. All of the documents published concern deals negotiated by PWC; documents from other tax firms were not published. The documents can be consulted in a database.

On 7 October 2014, the European Commission opened state aid investigations into a tax ruling dating from 2003 but still in force, enabling Amazon's main European retail company, Amazon EU SARL, to pay a large portion of its income (2.1 bn in 2013) to Amazon Europe Holding Technologies SCS, a partnership not taxable in Luxembourg, for intellectual property rights to the Amazon website, allegedly not at arm's length

terms, only leaving a minimal profit (28.8 m in 2013) to tax in Luxembourg. The case is the forth prominent example of state aid investigations into countries' tax rulings on multinational companies, following the cases on Apple (Ireland), Starbucks (Netherlands) and Fiat Finance (Luxembourg). None of these have been decided to date. For more information, please see the **CFE European Tax & Professional Law Report August/September 2014**.

READ MORE (click to open):

- News release on ICIJ.org: **EN**
- Luxembourg leaks Database: **EN**
- Press release: Opening of investigations concerning Amazon/Luxembourg, 7 October 2014: **EN** (DE, FR available)

tander). The Court held that the Commission has not sufficiently established that the Spanish tax measure had been selective. Indeed the undertakings affected did not share any specific characteristic distinguishing them from other undertakings, apart from the fact that they would be capable of satisfying the conditions to which the grant of the measure is subject.

READ MORE (click to open):

- Commission press release, 15 October 2014: **EN** (DE, ES, FR available)
- Court press release N° 145, 7 November 2014: **EN**
- Judgment, 7 November 2014: **EN, ES, DE, EL, FR, IT, PT**

Commission extends investigation into Gibraltar corporate tax regime to rulings

For more information, please see the **CFE European Tax & Professional Law Report August/September 2014**.

Commission: Spanish tax benefits for acquisitions of indirect shareholdings in foreign companies is state aid / General Court overturns Commission's previous decisions

On 15 October 2014, the European Commission concluded that tax benefits for acquisitions of indirect shareholdings in foreign companies was state aid incompatible with EU rules and has ordered Spain to claim back these benefits. The case concerns a new interpretation of the Spanish scheme, allowing companies to deduct from their corporate tax base the „financial goodwill“ arising from the acquisition of indirect shareholdings in foreign companies. The Commission has found that the measure provided the beneficiaries with a selective economic advantage; Spain has failed to notify the Commission of this new interpretation which is an extension of the previous practice which applied only to direct shareholdings and which had already been objected by the Commission in 2009 and 2011.

The latter two decisions however have been annulled by the EU General Court on 7 November 2014 (T-219/10 and 399/11, Autogrill España and Banco San-

ACCOUNTING

Commission expects country-by-country reporting by banks and investment firms not to have significant negative impact

As of 2015, banks and investment firms in the scope of the EU Capital Requirements Directive IV will have to publish annually information on their locations and activities, employees, turnover, profits or losses, taxes paid and public subsidies received, for every (EU- or non-EU) country in which they have an establishment. The European Commission has carried out a general assessment of possible adverse economic effects of such country-by-country reporting (CBCR), suggesting that the reporting obligations will not have a significant negative impact on competitiveness, investment, credit availability or the stability of the financial system. The report dated 30 October 2014 which draws on the results of a public consultation (see **CFE European Tax & Professional Law Report July 2014**), a round table and an **external study**, explains that stakeholders expect CBCR to have some positive impact on the transparency and accountability of, and on public confidence in the European financial sector. Nevertheless, it is suggesting that transparency would benefit from additional guidance to ensure consistent implementation in the member states.

READ MORE (click to open):

- Press release: [EN](#) (DE, FR available)
- Report: [DE](#), [EN](#), [FR](#)
- External study: [EN](#)
- Study, Executive Summary: [EN](#), [FR](#)

OTHER EU POLICY**New Commissioners present their cabinets**

The members of the new EU Commissioners' cabinets have been published in the "EU Who is who". The new European Commission has started its work on 1 November 2014.

READ MORE (click to open):

Lists: [EN](#) (all EU languages)

PROFESSIONAL LAW**CFE PAC reports on changes in tax advisers' professional affairs 2013-2014**

The CFE Professional Affairs Committee has published its report on changes in tax advisers' professional affairs in 6 European countries (Belgium, Czech Republic, Ireland, Malta, Poland, UK) during the past 12 months (September 2013-2014). "Professional affairs" includes all non-tax matters affecting the tax adviser's profession, e.g. qualifications, cross-border mobility, regulation, ethics, anti money laundering and the relationship with the tax authorities.

READ MORE (click to open):

PAC National Reports 2013/2014: [EN](#)

IMPRESSUM

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EUROPEENNE

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