



European Tax Report Confédération Fiscale Européenne (CFE)

March 2011 / Edition 3

CFE AMSTERDAM CONFERENCE

CFE Amsterdam Conference - The impact of Changing Global Cross- Border Trade on the EU VAT System

The Confédération Fiscale Européenne (CFE) and the Dutch Association of Tax Advisers (NOB) are organising a joint conference in Amsterdam on **Friday 24 June 2011** themed „The impact of changing worldwide cross-border trade on the EU VAT system“.

The main purpose of the conference is to identify and remedy cross-border VAT issues in a pan-European, as well as global, environment. Placing the European VAT system in the centre of the discussion, the goal of the conference is to collect evidence of both double taxation and double non-taxation situations. In particular, the conference focuses on double (non) taxation in cross-border intra-Community trade (trade between EU countries) and cross border „extra-Community trade“ (trade between EU and third countries), caused by, or enabled through, disparities in the VAT and GST systems that are currently in place in most countries in the world. The conference is aimed at investigating what measures have already been taken and what measures are still to be taken in order to prevent double (non) taxation.

READ MORE (click to open):

Programme and particular information: [EN](#)

NEWS - DIRECT TAX

Commission proposes optional CCCTB

On 16 March 2011, the European Commission published its long-awaited and controversial proposal for an optional Common Consolidated Corporate Tax Base (CCCTB) which is now available in all EU languages. The proposal is one of the EU's main tax initiatives in 2011. In contrast to the Commission's 2008 plans, the new CCCTB would be optional, meaning enterprises could choose whether to apply their respective national corporate tax bases for their group companies or whether to opt for the CCCTB for a period of 5 years in which all group companies would have to be included. The tax rates applicable for the income generated in their territories would be left for the member states to decide.

READ MORE (click to open):

Text of the CCCTB proposal (COM/2011/121):

[EN](#) [FR](#) [DE](#) [BG](#) [CS](#) [EL](#) [ES](#) [IT](#) [LV](#) [MT](#) [NL](#) [PL](#)
[PT](#) [RO](#) [SK](#) [SL](#) [FI](#)

Press release of 16 March 2011: [EN](#) [FR](#) [DE](#) [ES](#)
[NL](#) [IT](#) [PT](#) [FI](#) [EL](#) [CS](#) [LV](#) [MT](#) [PL](#) [SK](#) [SL](#) [BG](#)
[RO](#)

Impact assessment: [EN](#)

Summary of impact assessment: [EN](#) [FR](#) [DE](#)

Document "Questions and answers": [EN](#)

Commission requests UK to amend real estate tax regime which discriminates against students studying abroad

On 14 March 2011, the European Commission has formally requested the UK to amend its rules on local real estate taxes for students, on the basis that they discriminate against students subject to UK council taxes but studying in another member state. These students are refused a discount in community real estate taxes which is granted to students who reside

NEWS - DIRECT TAX

in the UK and decide to pursue their education in England or Wales. The Commission considers that these discriminatory provisions are in breach of the free movement of people (Art.21 of the Treaty on the Functioning of the EU) and dissuade students from exercising their rights to study in another EU country. The Commission does not see any possible justification for this discrimination. The request takes the form of a „Reasoned Opinion“ (the second step of an infringement procedure). In the absence of a satisfactory response within two months, the Commission may refer the UK to the EU Court of Justice.

READ MORE (click to open):

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

Commission requests Germany to amend discriminatory inheritance tax provisions

On 14 March 2011, the European Commission has formally requested Germany to amend provisions in its inheritance tax and gift tax legislation: Under German tax law, a tax exemption on inheritance of up to € 500,000 is granted to German residents (depending on the degree of kinship), whereas this exemption is only € 2,000 if both the testator and the heir are not resident in Germany. Equivalent provisions also apply in the case of gift tax. The Commission considers that these provisions are discriminatory and constitute an unjustified restriction on the free movement of capital, as provided for in Article 63 of the Treaty on the Functioning of the EU and Article 40 of the EEA Agreement. Such provisions could dissuade citizens living abroad from investing in property located in Germany. The Commission's request takes the form of a „Reasoned Opinion“ (second step of EU infringement proceedings). In the absence of a satisfactory response within two months, the Commission may refer Germany to the EU Court of Justice.

READ MORE (click to open):

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

Intangibles in transfer pricing: OECD meets with business commentators

On 21-23 March 2011, delegates from Working Party No. 6's Special Session on the Transfer Pricing Aspects of Intangibles met with private sector representatives to discuss the valuation of intangibles for transfer pricing purposes.

READ MORE (click to open):

Press release: [EN](#) [FR](#)

OECD invites comments on the administrative aspects of transfer pricing

On 9 March 2011, the OECD has launched a public consultation on a new project on administrative aspects of transfer pricing. Stakeholders are invited to report their experience with various forms of administrative simplification measures and their effectiveness, in particular "safe harbour" regimes. Comments can be sent until 30 June 2011.

READ MORE (click to open):

Press release: [EN](#) [FR](#)

NEWS - INDIRECT TAX

Council formally adopts VAT Implementing Regulation

On 23 March 2011, the VAT Implementing Regulation 282/2011 formally adopted by the Ecofin Council on 15 March 2011 was published in the EU Official Journal. Political agreement in the Council had already been reached on 16 January 2011, see [CFE European Tax Report 1/2011](#), p.4.

READ MORE (click to open):

Official journal: [EN](#) [FR](#) [DE](#)

Press release, p.13: [EN](#) [FR](#) [DE](#)

NEWS - INDIRECT TAX

Snack bars can benefit from reduced VAT rates

In joined cases C-497, 499, 501 and 502/09, Bog a.o., the European Court of Justice decided in a German preliminary ruling case that prepared food sold at snack stalls or in cinema foyers is normally to be considered "foodstuffs" and benefits from a reduced VAT rate. Facilities that allow clients to consume the food on site do not exclude the classification as delivery of goods. This however is different for party catering where additional services as the rental of crockery and cutlery or presentation of the food are involved.

READ MORE (click to open):

Press release: [EN](#) [FR](#) [DE](#) [ES](#) [EL](#) [IT](#) [NL](#) [RO](#)

Full text through case search: [EN](#)

CUSTOMS

Commission publishes guidelines on Authorised Economic Operator status for multinationals and large businesses

The concept of Authorised Economic Operators (AEO) was introduced with the security amendments in Regulation EC/648/2005 of the Community Customs Code. Economic operators that fulfil the conditions of customs compliance, appropriate record-keeping, financial solvency and, where relevant, security and safety standards can be granted the status of AEOs by one member state. In return, they benefit from simplified customs procedures. The status of AEO has to be recognised by other member states. The guidelines are of non-binding nature, aiming for a harmonised implementation of the Customs Code and its implementing regulations.

READ MORE (click to open):

Guidelines: [EN](#) [FR](#) [DE](#) [BG](#) [CS](#) [DA](#) [EL](#) [ES](#) [IT](#) [LV](#) [MT](#) [NL](#) [PL](#) [PT](#) [RO](#) [SK](#) [SL](#) [FI](#)

OTHER TAX POLICY

MEPs call for the introduction of a Financial Transaction Tax

On 8 March 2011, the EP voted two resolutions encouraging the Commission to propose a Financial Transaction Tax (FTT) and to provide tax-related assistance to developing countries to help these countries combat tax evasion and tax fraud and increase revenue and efficiency. The two resolutions on „innovative financing“ and on „tax and development“ had been prepared by the EP's Economic Affairs Committee (ECON) and the Development Committee.

The innovative financing resolution by Greek Socialist Anni Podimata argues that the tools proposed could have a double benefit by not only generating more funds, but also making the financial sector safer by discouraging speculative trading which would become more costly. If no international agreement could be reached, the EU should press ahead by introducing a FTT. The majority of MEPs believe that a revenue of almost € 200 billion could actually be raised EU-wide.

The tax and development resolution drafted by French Green MEP Eva Joly says that EU and developing countries should seek to boost their tax revenues by combating tax evasion and harmful tax practices. As a means to combat harmful tax structures, banking licences from banks that work with tax havens could be withdrawn. The resolution criticises a European Commission paper on promoting good governance in tax matters for ignoring the fact that trade liberalisation, and in particular economic partnership agreements, substantially reduce the customs revenues of low-income countries.

The Podimata report was adopted with 529 votes in favour, 127 against and 19 abstentions. The Joly report was adopted by a show of hands.

READ MORE (click to open):

Press release: [EN](#) (other language versions available)

Resolution on innovative financing (Podimata report): [EN](#) [FR](#) [DE](#)

Resolution on tax and development (Joly report): [EN](#) [FR](#) [DE](#)

OTHER TAX POLICY

Taxation paper on the role of housing taxation in the recent financial crisis

The Commission has issued taxation paper no.27 titled "The role of housing tax provisions in the 2008 financial crisis". The 29 pages paper had originally been prepared for a 2009 conference on Tax Policy and the financial crisis at Bocconi University Milan.

READ MORE (click to open):

Taxation paper: [EN](#)

Draft EP resolution wants to link distribution of EU funds to member states' cooperation in tax matters

A series of draft recommendations to overcome the financial crisis, tabled by French S&D MEP Pervenche Berès on 29 March 2011, expresses support for further tax harmonisation, the fight against tax evasion and tax havens, the proposed CCCTB and for measures contained in the VAT Green Paper to make VAT more fraud-proof. Moreover, it appears that the draft resolution seeks to link the distribution of EU funds with the degree of cooperation of EU member states in tax harmonisation and fight against tax evasion. A decision by the "Special Committee on the Financial, Economic and Social Crisis" has not yet been taken.

READ MORE (click to open):

Draft resolution (points 41-43): [EN](#) [FR](#) [DE](#) [BG](#) [CS](#) [EL](#) [ES](#) [FI](#) [IT](#) [LV](#) [MT](#) [NL](#) [PL](#) [PT](#) [RO](#) [SK](#) [SL](#)

Press release: [EN](#) (other languages available)

OECD publishes database containing fiscal data at local and regional government levels

The OECD has made available their OECD fiscal decentralisation database providing comparative information on e.g. balances, consolidated expenditure and revenue, tax revenue, inter-governmental trans-

fers and revenue structures of government sectors in OECD member countries and their development between 1995 and 2009. This data is broken down by levels of government (local, state and, where applicable, regional level).

READ MORE (click to open):

[EN](#)

Spain signs updated Convention on Mutual Administrative Assistance in Tax Matters

The OECD and the Council of Europe Convention originally dates back to 1988. It has been complemented by a Protocol following a call for a multilateral framework for the exchange of information for tax purposes by the G20 in 2009. The Protocol updates the standard on exchange of information and opens the amended Convention to all countries. The amended Convention will enter into force on 1 June 2011. The Convention has a wide scope permitting all forms of administrative assistance (including information exchange on request, automatic exchange of information, simultaneous tax examinations and assistance in tax collection) on all types of taxes while providing for high standards of confidentiality and leaving flexibility to the parties through the possibility of lodging reservations. As a multilateral instrument, it provides a single legal basis for multi-country cooperation. With the signing of Spain on 11 March 2011, the group of countries member to the Convention and Protocol comprises 19 countries: These are DK, ES, FI, FR, Georgia, Iceland, IT, Korea, Mexico, Moldova, NL, NO, PL, PT, Slovenia, Sweden, the Ukraine, the UK and the US.

READ MORE (click to open):

News release: [EN](#) [FR](#) [ES](#)

EVENTS

Pros and Cons of financial sector taxes: The Brussels Tax Forum 2011

On 28 and 29 March, the European Commission hosted the Brussels Tax Forum 2011 dedicated

EVENTS

to financial sector taxation. The conference which was closely connected to the current EU Commission consultation (see [CFE European Tax Report 2/2011](#), p.5) dealt with different proposed forms of financial sector taxes: These are a Financial Transactions Tax (FTT), a Financial Activities Tax (FAT) and/or bank levies. The conference made clear how the policy choice would depend on whether the main objective was to raise revenue or to influence market behaviour, namely risk-taking and bonus payments: A FAT applicable on all banks to compensate for the VAT exemption of financial services would have little influence on risk-taking as it would also apply to banks which mainly provide credit to consumers and the real economy and are not involved in speculative trading while it would not apply to non-financial companies that engage in speculative derivatives trading. On the other hand, it was argued that banks had received government support during the financial crisis, causing the current budget deficits. While the views on the effect of a FTT on dislocation of transactions diverged, experts agreed that the cited additional EU-wide tax revenue of € 200 billion was not realistic. In the course of the discussions, it came out that a surprisingly high number of countries already had a FTT or similar tax in place, in particular the UK ("stamp duty"). It also appeared that the Commission tends to favour a FAT over a FTT.

READ MORE (click to open):

Programme: [EN](#)

Presentation and speeches: [EN](#)

Videos: [First day](#) [Second day](#)

chance to express their thoughts and views on the problems that currently exist with regard to VAT, and how these can be addressed. The Commission will use the feedback from this consultation to decide the best approach in creating a more stable, robust and effective VAT system for the future.

READ MORE (click to open):

Programme and practical information: [EN](#) [FR](#) [DE](#)

Beyond Discrimination: Conference on the role of the ECJ Case-Law in the International Division of Taxing Powers in Direct Taxation on 19/20 May in Brussels

The Max Planck Institute for Tax Law and Public Finance in Munich, the PwC Chair in Tax Law of the Catholic University of Louvain/Belgium (UCL) and the Tax Institute of the University of Liège are organising their two-day Congress on European Tax Law in Brussels on 19/20 May 2011. Twenty-five years ago, the famous *Avoir Fiscal* case gave occasion to the European Court of Justice to inaugurate a fruitful case-law on the application of EU Treaty freedoms in direct taxation. Based as it was on the concept of discrimination, this case-law has had a significant impact on the Member States' shaping of tax systems. The Court's most recent decisions, however, seem to reflect a slackening pace and a loss of vigour in applying the discrimination approach. This Conference examines whether the time has come for the Court to develop original EU criteria for the allocation of taxing powers between member states.

READ MORE (click to open):

Programme and practical information: [EN](#)

Commission hosts Conference on the future of VAT on 6 May 2011 in Milan

The European Commission (Directorate General for Taxation and Customs Union) organises a one day conference in Milan on the 'Green Paper on the future of VAT - Towards a simpler, more robust and efficient VAT system' on 6 May 2011. With the presentation of that Green paper in December 2010, the European Commission launched a wide public consultation on how the EU's VAT system can be strengthened and improved to the benefit of citizens, businesses and member states (see [CFE European Tax Report 1/2011](#), p.5). The aim is to give all stakeholders a

IMPRESSUM

CONFEDERATION
FISCALE
EUROPEENNE

Confédération Fiscale Européenne
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, Administrative Assistant

Disclaimer: The Confédération Fiscale Européenne (CFE) distributes this report to enhance public access to information about European policies in general. The CFE accepts no responsibility or liability whatsoever with regard to the material. The links will connect you to sites which are in no way controlled by the CFE, and CFE is not responsible for their content, or indeed for any further links which they may support.
All rights reserved.