



## European Tax Report Confédération Fiscale Européenne (CFE)

October 2011 / Edition 9

### CFE EVENTS

#### CFE European Professional Affairs Conference on 29 November 2011: New regulatory trends for tax advisers - necessary or not ?

The 4th CFE Professional Affairs Conference will take place in Brussels on 29 November 2011. It will deal with regulation of the tax profession at national level and recent developments in EU legislation and ECJ case-law that may impact on regulation.

From the EU perspective, especially the ongoing implementation of the Services Directive challenges a number of existing professional rules at national level. Pamela Brumter-Coret, head of unit at Directorate-General Internal Market at the European Commission will speak about a possible contradiction of professional regulation and internal market freedoms.

An interesting development in professional regulation is the Tax Agents Strategy of HMRC, the UK tax administration which will be presented by Brian Redford. Although the tax profession is not regulated by law in the UK, the administration considers a duty of tax representatives to register with the authorities.

Afterwards, to give an example of the diversity of the tax profession and its regulation in Europe, two speakers from the Netherlands and Germany will each advocate their regulatory systems.

A panel discussion will endeavour to find out how the future regulatory environment for tax advisers will look like. The half-day event will take place in English and interpretation into German will be available.

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

Programme and registration form: [EN](#)

Programme: [DE](#)

### NEWS - DIRECT TAX

#### OECD releases a discussion draft on the definition of permanent establishment

On 12 October 2011, the OECD invited public comments on proposed changes to the Commentary on Article 5 (Permanent Establishment) of the OECD Model Tax Convention. This definition of permanent establishment is primarily used for the purpose of the allocation of taxing rights when an enterprise of one State derives business profits from another State. Despite the long history of the concept of permanent establishment, its practical application raises a number of issues (see the [CFE Forum 2011](#) devoted to Permanent Establishment). Interested parties can send their comments to OECD before 10 February 2012.

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

OECD news release: [EN](#) [FR](#)

#### Commission requests Ireland and Spain to modify car registration tax rules for vehicles from other Member States

On 27 October 2011, the European Commission has formally requested Ireland and Spain to change the way in which they tax leased or rented vehicles from another Member State, as well as company cars in the case of Spain, so as to ensure their rules comply with EU legislation.

According to EU rules, a Member State may levy a registration tax on a leased or rented vehicle from another Member State when it is used or intended to be used on a permanent basis but only in proportion to the duration of use in its territory.

Under Irish law, an Irish resident who rents or leases a vehicle in another Member State is obliged to pay the full amount of the registration tax. An exemption or refund is therefore not possible if a car is used in Ireland only for a short period. The Commission considers this a discriminatory tax treatment contrary to EU rules. Leasing or rental companies in other Mem-

ber States may face additional taxation when offering their services to Irish residents.

Spain also levies the full amount of registration tax on a leased or rented vehicle by a Spanish resident in another Member State, irrespective of the actual duration of the use of the leased car (unless the leasing period is shorter than three months in any twelve months). Finally, under Spanish law, the registration tax on a car can be levied in full if an employee who works for a company established in another Member State uses a car in Spain and is resident in Spain. According to the Commission, these provisions violate the free movement of workers and the freedom of establishment.

In the absence of compliance with EU law within two months, the Commission may refer Ireland and Spain to the EU's Court of Justice. There is already ECJ case law on this issue.

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

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

## **Commission refers Spain to ECJ over inheritance and gift tax**

On 27 October 2011, the European Commission has decided to refer Spain to the EU's Court of Justice for discriminatory rules on inheritance and gift tax that require non-residents to pay higher taxes than residents. Inheritance and gift tax in Spain are regulated at both state level and at the level of autonomous communities. The autonomous communities' legislation grants residents a number of tax benefits that, in practice, allow them to pay much lower taxes than non-residents. The Commission considers that this discriminatory tax treatment constitutes an obstacle to the free movement of people and capital (Articles 45 and 63 TFEU).

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

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

## **Commission refers Cyprus to the ECJ over car taxation rules**

On 27 October 2011, the European Commission

has decided to refer Cyprus to the EU's Court of Justice because its car taxation rules discriminate against non-Cypriot EU citizens who transfer a car into Cyprus. Under Cypriot legislation, EU nationals who set up a permanent residence in Cyprus are only exempted from paying excise duty on a new imported car if they do not practice a profession in Cyprus. Such a condition does not apply to Cypriot citizens, nationals and descendants who return to live permanently in Cyprus. This regime discriminates against non-Cypriot EU citizens and is contrary to EU rules which guarantee the free movement of workers and freedom of establishment (Articles 18, 45 and 49 TFEU).

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

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

## **Commissioner Šemeta criticises bilateral German and UK tax treaties with Switzerland**

EU Commissioner for Taxation and Customs Union, Audit and Anti-Fraud Algirdas Šemeta has expressed his opposition to the German and UK agreements with Switzerland to tax hidden savings of their citizens (see [CFE European Tax Report 8/2011](#), p.2) in a speech at the European Parliament on 25 October 2011. Both bilateral agreements were concluded in August 2011 and are currently being examined by the Commission.

The Commissioner maintained that in concluding tax agreements with non EU countries Member States must respect the competence of the EU which may have been violated where the agreements concern situations covered by the EU Savings Tax Directive. Moreover, such bilateral agreements reduce the Commission's room for manoeuvre in future negotiations.

Regarding the German-Swiss agreement, the withholding tax rate differs from the rate contained in the EU-Swiss withholding tax agreements. Furthermore, the withholding tax agreed by the two countries would be final while the EU-Swiss rate is considered merely an advance payment. Šemeta fears that bilateral agreements undermine the EU efforts to negotiate an amended savings tax deal with Switzerland. The Commission has asked for but not yet received a negotiating mandate from the Member States in the Council.

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

Speech: [EN](#)

## NEWS - DIRECT TAX

## EP ECON Committee exchanges views on FTT with Commissioner Šemeta

On 6 October 2011, Tax Commissioner Šemeta discussed with members of the European Parliament's Committee on Economic and Monetary Affairs (ECON) the financial transaction tax proposed by the Commission in late September (see [CFE European Tax Report 8/2011](#), p.1). The Commissioner believes that an EU financial transaction tax could raise €57 billion per year.

Speaking specifically about the contentious practice of high-frequency trading, Mr Šemeta said that a financial transaction tax could force firms to rethink this model of trading since it would be the practice most targeted by the tax. MEPs expressed their concerns that the tax would damage EU financial centres, be it London as a major hub or medium-sized marketplaces. Šemeta countered the argument that companies would relocate to non-European destinations if such tax was introduced by stressing that tax regimes alone do not determine location.

The debate saw wide divisions, notably between British Conservatives and some Liberals on one side and Greens and Socialists on the other. Replying to the MEPs' questions, Mr Šemeta said he was fully aware that a global FTT would currently not be feasible. He also stressed that if some Member States were not willing to participate it would be possible to use enhanced cooperation, with the tax being imposed on all institutions headquartered in the participating countries, thereby also taxing their activities outside.

He added that he believed that pension funds, as less intensive users of financial trading than investment banks, would be less affected by the tax. However he also cautioned against exemptions since this could lead to circumvention. The question of how to distribute the proceeds was still being worked upon by Budget Commissioner Lewandowski, Mr Šemeta said.

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

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

**Recording** (interpretation in some EU languages)

## EP votes for including minimum taxation in Parent-Subsidiary Directive

On 26 October 2011, the European Parliament adopted a report by German Green MEP Sven Giegold on a recast of the Parent-Subsidiary Directive. The Directive aims to prevent the double (or multiple) taxation of profits generated by subsidiaries in other Member States.

In early 2011, the Commission had proposed a mere recast of the Directive without substantial changes (see [CFE European Tax Report 8/2011](#), p.3). The minimum taxation requirement was subsequently suggested by Mr Giegold. The minimum taxation rate would be 70% of the average EU corporate tax rate which currently amounts to a rate of 16%.

In a speech delivered at the EP on the day before, Commissioner Algirdas Šemeta rejected such change in the context of the recast of the Directive, stressing that the proposal to introduce a minimum taxation challenged the freedom of establishment and would not be suited to attain its aim, the prevention of aggressive tax planning. According to the Commissioner, for such substantial change of the Directive, an amendment was needed which required a thorough impact assessment. He promised to address the issue of double non-taxation in 2012.

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

Adopted text: [EN](#) (links to other languages versions)

## NEWS - INDIRECT TAX

## Commission refers Ireland to ECJ over fuel excise duty exemption

On 27 October 2011, the Commission has decided to refer Ireland to the EU's Court of Justice for failing to correctly implement EU rules on excise duties on fuel. Until the end of 2006, Ireland was allowed to apply an exemption on fuel used by disabled people for their motor vehicles. At the end of 2006 this derogatory regime came to an end. However, Ireland continued applying this exemption, despite contrary statements by the Irish authorities.

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

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

## NEWS - INDIRECT TAX

### Commission requests Italy to implement VAT Directive amendments

On 27 October 2011, the European Commission has formally requested Italy to adopt and inform the Commission of national measures to implement two 2009 amendments to the VAT Directive 2006/112/EC: Directive 2009/162/EU clarifies a number of aspects of the VAT Directive in order to ensure a more consistent application across Europe to the benefit of businesses and consumers. Directive 2009/69/EU sets out rules on the tax treatment of certain imports in order to better fight tax fraud. The Commission considers that this failure results in a less taxpayer-friendly VAT system and makes the VAT system more vulnerable to fraud. The Commission's request takes the form of a reasoned opinion, the second step of EU infringement proceedings. The Commission may bring this case before the ECJ if Italy fails to amend its legislation within two months.

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

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

### Commission requests Bulgaria to amend its VAT refund rules

On 27 October 2011, the European Commission has officially requested Bulgaria to amend its VAT legislation. The rules in Bulgaria on the conditions for refunding VAT to taxable persons subject to a tax audit discriminate against persons involved in intra-Community transactions.

Under Bulgarian legislation, taxable persons who undergo a tax audit are refunded VAT at the end of the audit procedure. However there are specific time periods for audits of taxable persons involved in intra-Community transactions. These time limits are twice as long as those applicable to traders only involved in domestic transactions.

Therefore, taxable persons carrying out intra-Community transactions who wish to obtain the refund before the end of the tax audit must lodge a security or a bank guarantee for twice as long a period.

The Commission considers that these rules incompatible with the VAT Directive 2006/112/EC and with the principle of proportionality. The request takes the form of a reasoned opinion (the second stage of an infringement procedure). If the rules are not brought

into compliance within two months, the Commission may refer the matter to the European Court of Justice.

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

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

### Commission publishes explanatory notes to 2nd VAT Invoicing Directive

On 5 October 2011, the European Commission published explanatory notes for clarification of the second Directive on VAT invoicing (2010/45/EU) adopted on 13 July 2010. The Directive which modernises and harmonises the VAT invoicing rules establishes equal treatment of paper and electronic invoices and shall be applied by Member States as from 1 January 2013. The use of electronic invoicing is promoted to reduce burdens on business, support SMEs and help Member States to tackle fraud.

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

Explanatory notes: [EN](#)

Directive 2010/45/EU: [EN](#) (link to other language versions)

### EP adopts report on "the future of VAT"

Very much in line with what the ECON Committee had voted for on 22 September, the plenary of the European Parliament adopted on 13 October 2011 the report of Maltese conservative MEP David Casa on the future of VAT (see [CFE European Tax Report 8/2011](#), p.4). The emphasis on the report is on facilitation of the complex system of VAT exemptions and reduced rates (yet proposing new possibilities for reduced rates like a "green VAT strategy"), on increased use of IT and electronic submission of VAT returns, on reduction of administrative burden through e.g. standard invoices, standardised VAT maximum obligations and lowering the frequency of periodic VAT returns and on efficiency of tax collection and fight of fraud. The resolution was adopted by a broad majority, 521 MEPs being in favour, 50 against and 58 abstentions.

## NEWS - INDIRECT TAX

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

EP resolution: [EN](#) (link to other language versions)

## ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

### UK Serious Fraud Office publishes guide to serious economic crime prevention and compliance

The purpose of this report to which bodies as diverse as the European Commission's anti-fraud office OLAF, OECD, Transparency International, the World Bank and the City of London Police have contributed is to give businesses informed commentary on the impact of anti-fraud and anti-corruption legislation, both from a prevention and an investigation point of view. Among the practices dealt with are bribery, cartel infringements, money laundering and insider trading. The contributions take the UK, EU and international perspectives.

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

Guide to serious economic crime prevention and compliance: [EN](#)

## COMPANY LAW

### Commission proposes company law package including a revised Accounting Directive, country-by-country reporting and corporate social responsibility

On 25 October 2011, the European Commission has proposed a legislative package in company law, containing a review of the EU Accounting Directives, a review of the Transparency Directive and communications on corporate social responsibility and on a

“social business initiative”.

#### Financial statements:

The Accounting Directive proposal concerns the annual accounts of limited liability companies that do not have to do IFRS accounting. It would merge the current 4th (78/660/EEC) and 7th (83/349/EEC) company law directive, meaning consolidated financial statements would be included in the general Accounting Directive. The thresholds to define small and medium sized entities have been raised by approximately 14% each to counter the effect that companies fall under a stricter regime due to inflation. Furthermore, the Commission stresses that requirements have been simplified using a “bottom-up” approach with small companies as a starting point. For small companies, the rules would provide for maximum harmonisation meaning Member States could not impose additional requirements. Audits for small companies and consolidated financial statements for small groups could no longer be required. Notes to the accounts could be reduced. For medium-sized entities, the proposal seeks to reduce Member States' options to increase comparability of companies throughout the EU.

First consultations on the proposal had started in 2008. When the International Accounting Standards Board issued the new “IFRS for SMEs” standard in 2009, it had been expected that the new EU accounting rules would follow these rules but the Commission has decided against this option. Countries could adopt parts of the “IFRS for SMEs” as their accounting standard but not the full package as some elements conflict with the proposed Accounting Directive.

The proposal does not contain an exemption of so-called “micro-entities” from EU accounting rules but the Commission considers still including such exemption after agreement with the Parliament and the Council has been achieved. A proposal of the Commission on a micro-entities exemption had been made in February 2009 but was subsequently watered down by the Council in May 2011 (see [CFE European Tax Report 5/2011](#)), to the dislike of the EP's rapporteur Klaus-Heiner Lehne).

#### Country-by-country reporting for the extractive industry:

In the extractive (oil, gas, mining) and logging sector, non-listed large companies registered in EEA countries and all companies listed on EU regulated markets shall be obliged to report all material payments to governments in any country, broken down by country and, where possible, by project. This shall improve the accountability of governments in resource-rich, particularly developing countries and help prevent non-taxation of the enterprises affected. The necessary changes concern both the Accounting Directive and the Transparency Directive (see below).

## COMPANY LAW

### Transparency requirements for listed companies:

Another proposal concerns the revision of the existing Transparency Directive 2004/109/EC for listed companies. These companies currently have to provide financial information on a yearly, half-yearly and quarterly basis. According to the proposal, Member States could no longer require companies to publish quarterly information. Thereby, the Commission seeks to reduce compliance costs for companies. At the same time, the Commission seeks to extend notification duties beyond actual shareholding to all holdings of financial instruments that can be used to acquire economic interest in listed companies and have the same economic effect as holdings of equity. This shall close a legislative gap which has enabled companies to invisibly acquire influence over listed companies.

### Corporate social responsibility (CSR) and social business initiative:

The Commission is also proposing an action plan to promote corporate social responsibility and expresses its intention to bring forward a new legislative proposal on company disclosure of social and environmental information. Furthermore, the Commission seeks to establish good practices for the development of CSR codes of conduct for business to operate on a self- and co-regulation basis.

Finally, the package includes a Communication on improving the access to funding, visibility and legal environment of social businesses which would be followed by the proposal of a Statute for European Foundations and a revision of the European Cooperative Society Statute.

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

Accounting Directive proposal COM(2011)684:  
**[EN](#) [FR](#) [DE](#)**

Commission website on the mentioned company law initiatives: **[EN](#) [FR](#)**

### **Draft EP resolution stresses need for EU directive on cross-border transfer of company seat**

On 10 October 2011, Austrian Social Democrat MEP Evelyn Regner has drafted a motion for an EP re-

solution demanding from the Commission a proposal for a Directive allowing the cross-border transfer of seats of limited liability companies without requiring their liquidation. A cross-border transfer of the registered office of a company shall only be allowed if the real (administrative) seat is transferred as well. This shall serve to prevent circumvention of the laws of the Member State of the administrative seat and creation of post-box offices and shell companies. The transfer should remain tax-neutral and without compromising stakeholder (employees, shareholders and third parties) rights.

Responsible Committee is the Committee for Legal Affairs (JURI).

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

Draft report: **[EN](#) [FR](#) [DE](#)**

## CUSTOMS

### **Commission publishes 2012 version of Combined Nomenclature**

The amendment to Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff was published in the EU Official Journal on 28 October 2011. The document contains 900+ pages.

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

EU Official Journal: **[EN](#)** (link to other language versions)

## OTHER TAX POLICY

### **DG ECFIN report on tax reforms in EU Member States 2011**

On 10 October 2011, the Directorate-General Economic and Financial Affairs of the European Commission (DG ECFIN) published its annual report on tax reforms in EU Member States. The report also analyses the issue of quality of taxation and identifies challenges for tax policy in Euro-area Member States that

## OTHER TAX POLICY

Member States may take into account for their future tax reforms.

These challenges can be grouped into three types:

- To address fiscal consolidation by measures on the revenue side;
- to make the tax structure more growth friendly;
- to improve the design of the tax system for individual types of taxes.

Tax measures adopted in the first half of 2011 focused in almost all Member States on raising tax revenues, after the emphasis in 2008-2010 has been to adopt tax stimulus measures. Overall tax policy in the EU thus had a slightly contractionary effect on GDP already in 2010.

Applying an indicator-based approach, the report identifies in which Euro-area Member States higher tax revenues could potentially contribute to consolidation and which countries could benefit from a shift from labour taxes, in particular those falling on vulnerable groups, to consumption and real estate taxes. Analysing more specific horizontal challenges related to the design of individual taxes, the report concludes that almost all Euro-area Member States face at least one challenge. Among these challenges, the report looks in particular at the potential need to decrease tax expenditure in direct taxation, the debt bias in direct taxation, VAT efficiency, possible options to „green“ tax systems, the efficiency of tax collection and issues of tax evasion. These identified tax challenges may deserve further investigation in the framework of the integrated economic policy coordination with the EU, i.e. the „European Semester“.

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

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

Report: [EN](#)

## 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:  
[brusseloffice@cfe-eutax.org](mailto:brusseloffice@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.