



European Tax Report Confédération Fiscale Européenne (CFE)

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NEWS - DIRECT TAX

Commission proposes non-legislative action to solve double taxation

On 11 November 2011, the European Commission has issued a (non-legislative) communication on double taxation. Albeit arguing for the elimination of double taxation the Commission explains that current EU rules alone are not able to resolve double taxation where member states exercise their parallel tax sovereignty (which is the case law of the ECJ). The Commission proposes therefore, next to the revision of existing EU Directives and conclusion of more bilateral double tax conventions (DTCs), to establish an "EU Forum on Double Taxation" to elaborate a "Code of Conduct on Double Taxation" based on the experience of the "Joint Transfer Pricing Forum".

Dispute resolution is another field addressed. Neither the Arbitration Convention nor DTCs offer a satisfactory solution as Arbitration Convention procedures are very time-consuming and double taxation conventions still based on the "old" (pre-2008) Art.25 OECD Model Convention do not foresee a binding dispute resolution mechanism. Lastly, the Commission announces further initiatives for the forthcoming months and asks for the opinion of stakeholders how it should seek to tackle the issues named.

READ MORE *(click to open)*:

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

Double taxation Communication COM(2011)712:
[EN](#) [FR](#) [DE](#)

Commission proposes extending benefits of Interest & Royalties Directive

On 11 November 2011, along with its double taxation communication, the Commission proposed a review of the Interest and Royalties (I&R) Directive 2003/49/EC. The amendment proposes lowering the capital holding threshold from 25 to 10% above which member states have to consider companies as associated, with the possibility of member states remaining to accept lower thresholds. This would align the I&R Directive with the Parent-Subsidiary Directive which

also serves the purpose of preventing company double taxation and uses a 10% threshold. Further amendments concern removal of an unclarity in the identification of the payment by the permanent establishment and a non-taxation situation resulting from the application of the Directive even when the I&R payment is tax-exempt in the hands of the beneficial owner. Minor amendments concern the formal inclusion of the European company forms SE and SCE.

READ MORE *(click to open)*:

Proposal COM (2011) 714: [EN](#) [FR](#) [DE](#)

Impact assessment: [EN](#)

CFE issues CCCTB Opinion Statement

On 24 November 2011, the CFE issued its Opinion Statement on the European Commission proposal for a CCCTB (Common Consolidated Corporate Tax Base) of 16 March 2011 (see [CFE European Tax Report 3/2011](#), p.1).

The paper which is a work of the Direct Tax Subcommittee of the CFE Fiscal Committee argues that the main elements of the CCCTB, optionality, consolidation and non-harmonisation of tax rates shall be maintained as well as the proposed apportionment formula and the concept of an administrative one-stop-shop. The paper lists a number of areas where further clarification by the Commission is needed. To make the CCCTB more workable for businesses, the CFE proposes to ease the documentation requirements for intra-group transactions. Furthermore, CFE proposes the creation of an alternative dispute resolution body to advance the development of commonly recognised administrative practices and a CCCTB case law which would give legal certainty to businesses.

A point of criticism, addressing the European Commission, is the lack of coordination within the Commission of the work on the CCCTB proposal and the revision of the EU Accounting Directives which is seen as a missed chance for facilitation in countries where trade balance sheet and tax balance sheet share many common elements.

READ MORE (click to open):

CFE Opinion Statement: [EN](#)

Council adopts Parent-Subsidiary Directive recast

On 30 November 2011, the Ecofin Council adopted a recast of the Parent-Subsidiary Directive proposed in January 2011 by the European Commission. The recast does not contain material changes. In particular, the Council decided not to follow the demand for introduction of a minimum taxation in the amount of 70% of the average EU corporate tax rate expressed by the European Parliament in October 2011 on the initiative of German Green MEP Sven Giegold (see [European Tax Report 9/2011](#), p.3).

READ MORE (click to open):

Press release: [EN](#)

Changes adopted: [EN](#)

Exit taxation: ECJ rules that Netherlands may tax unrealised capital gains of companies moving out but must allow deferred payment

On 29 November 2011, the European Court of Justice decided the National Grid Indus Case (C-371/10) on exit taxation of unrealised capital gains of a Dutch company transferring its place of management to the UK. The unrealised capital gains resulted from a claim in Pounds Sterling which over the years had gained value due to exchange rate movements. According to Dutch legislation, this gain had to be taxed immediately, at the very time of the transfer. The ECJ ruled that in principle, the preservation of allocation of taxing powers between the member states justified the difference in treatment between companies moving their seat within the Netherlands and to other member states. However, proportionality may require that companies are left the choice between immediate taxation and a deferred payment, depending on what is less burdensome for the company.

READ MORE (click to open):

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

Judgment: [EN](#) [FR](#) [DE](#) (other language versions available)

Opinion Advocate-General Kokott: [EN](#) [FR](#) [DE](#) (other language versions available)

Netherlands taken to Court over inheritance and gift tax rules

On 24 November 2011, the European Commission decided to refer the Netherlands to the EU Court of Justice for discriminatory rules on inheritance and gift duties (see [CFE European Tax Report 8/2010](#), p.2). Under Dutch legislation, country estates located in the Netherlands are fully or partially exempt from succession and gift duties, while inheritance or gifts of country estates in other European Economic Area states are taxed on 100% of their market value. In line with the 2008 ECJ judgement in the Jäger case, C-256/06, the Commission considers this difference in treatment contrary to the free movement of capital.

READ MORE (click to open):

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

Commission asks Belgium to end additional taxation of certain types of capital income from non-EEA countries

On 24 November 2011, the European Commission has sent a reasoned opinion to Belgium, asking the country to abolish additional taxation of certain types of income from capital deriving from outside the European Economic Area and not received/collected by an intermediary established in Belgium. The same income paid by an intermediary established in Belgium is subject only to withholding tax. Following a reasoned opinion sent in November 2010 (see [CFE European Tax Report 9/2010](#), p.3), the Belgian legislation was amended to reflect the ECJ ruling of 1 July 2010 in the Dijkman-Lavaleije case, (C-233/09). The Commission considers, however, that a breach of EU law persists.

NEWS - DIRECT TAX

READ MORE (*click to open*):

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

OECD publishes public comments on tax treaty issues of emissions permits

OECD received only three contributions to the consultation which was open from May to October 2011 (see also [CFE European Tax Report 5/2011](#), p.1). Those have now been published on the OECD website.

READ MORE (*click to open*):

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

OECD meets with business commentators on the valuation of intangibles in transfer pricing

On 7-9 November 2011, delegates from OECD's Working Party No. 6's "Special Session on the Transfer Pricing Aspects of Intangibles" met with private sector representatives to discuss definitional and ownership issues related to transfer pricing for intangibles.

READ MORE (*click to open*):

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

[Agenda](#)

[Presentation material](#)

[List of participants](#)

NEWS - INDIRECT TAX

Commission publishes VAT White Paper

On 6 December 2011, the European Commission published its communication on the future of VAT, drawing conclusions from the VAT Green Paper consultation to which CFE contributed.

In this paper, the Commission announces 26 measures in the field of VAT for the coming years, which include:

Simplification:

- a renunciation of the principle of origin with a legislative proposal in the first half of 2014 to establish a definite destination principle regime (points 25-26);
- responding to member states' concerns, the introduction of a general one-stop shop will only be envisaged after 2015, based on the experience from the "mini one-stop shop" for certain sectors (points 1-2);
- opening of an EU VAT portal will up-to-date information on member states' VAT rules, including lists of products for which the standard rate does not apply (points 3, 12);
- issuing of more explanatory notes before entry into force of new EU VAT legislation (point 4);
- establishment of an "EU VAT Forum" with Commission, member states and stakeholders (point 5);
- a standardised VAT declaration proposal in 2013, followed by standardised VAT registration, invoices a.o. (points 6-7);

Tax base and rates:

- phasing out exemptions to reduce competition distortions in areas with both private and public sector involvement (point 8);
- abolition of the option to exempt passenger transport (point 9);
- no extension of exemptions for non-profit organisations (point 10);
- shortening the list of current possibilities to reduce rates (point 11);

Anti-fraud:

- introduction of a quick reaction mechanism to grant derogations more quickly to fight fraud schemes (point 13);
- significantly broadening automated cross-border

NEWS - INDIRECT TAX

access to information by tax administrations (point 15);

- establishment of an EU cross-border audit team (point 16);
- encouraging tax administrations to develop an “enhanced relationship” with businesses (point 20);
- asking for an EU mandate for negotiating information exchange agreement with non-EU countries in indirect tax (point 21);
- despite widespread criticism, the Commission intends to further explore the “split payment model” (point 23).

READ MORE *(click to open)*:

“White paper” Communication COM(2011)851/3:
[EN](#) (other language versions available soon)

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

Summary of the VAT Green Paper responses: [EN](#)

READ MORE *(click to open)*:

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

OECD experts meet to discuss VAT policy design and application of VAT to international trade

On 8 and 9 November, delegates from Working Party N° 9 on Consumption Taxes met in Paris to discuss policy issues on the design and operation of Value Added Taxes (VAT and its equivalent, called Goods and Services Taxes – GST in certain jurisdictions). The discussion was mainly focused on the further development of internationally agreed principles for applying VAT/GST on international trade.

READ MORE *(click to open)*:

Meeting report: [EN](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

Energy Taxation removed from Council agenda

The ministers at the 8 November 2011 Ecofin Council decided to take the review of the Energy Taxation Directive off the Council agenda due to the differences in opinion among the Member States’ delegations. They asked the Council working groups to work further on this subject. The Energy Taxation Directive review had been proposed by the Commission on 13 April 2011 (see [CFE European Tax Report 4/2011](#), p.4).

Commission takes Italy to ECJ over VAT exemptions for ships

On 24 November 2011, the European Commission decided to refer Italy to the Court of Justice for the VAT exemption it grants to certain services relating to ships (see [CFE European Tax Report 5/2011](#), p.5) which, as the Commission finds, is not in line with the VAT Directive.

G20 sign OECD Multilateral Convention on Mutual Administrative Assistance - Global Forum publishes 2011 progress report

On 3 November 2011, the OECD proudly announced that all G20 governments have agreed to the “Multilateral Convention on Mutual Administrative Assistance in Tax Matters” offering tools for cross-border tax co-operation. This includes automatic exchange of information, multilateral simultaneous tax examinations and international assistance in the collection of tax due to target tax evasion by both individuals and corporations. At the same time, the Convention imposes safeguards to protect the confidentiality of the information exchanged. The Convention applies to all kinds of taxes.

The Convention which dates back to 1988 was streamlined in 2009 through an OECD and Council of Europe protocol to bring it in line with the international standard on exchange of information and to open it up to countries that are neither members of the OECD nor of the Council of Europe.

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

On the same occasion, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes published its progress report prepared for the G20 meeting in Cannes. On 4 November 2011, the Global Forum included 105 countries in its peer review process.

READ MORE *(click to open)*:

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

Information document on the Multilateral Convention: [EN](#)

Global Forum Progress report: Tax Transparency 2011: [EN](#)

Commission adopts implementing regulation on cross-border recovery of tax claims

On 18 November 2011, the Commission adopted a Regulation laying down detailed provisions to implement the directive 2010/24/EU on cross-border recovery of tax claims. These tools include, in particular, a uniform instrument to allow debt recovery decisions to be enforced. The aim is to avoid problems of translation and recognition of foreign legal and procedural instruments. Another concrete tool is a uniform notification form that will enable taxpayers in other member states to be notified of official documents and decisions.

READ MORE *(click to open)*:

Text of Implementing Regulation (EU) 1189/2011: [EN](#) [FR](#) [DE](#)

PROCEDURAL LAW

ECJ goes e-justice

On 23 November 2011, the European Court of Justice introduced "e-Curia", an application that allows re-

presentatives of parties to send their documents via a secure internet connection and consequently frees them from sending paper documents and certified copies.

READ MORE *(click to open)*:

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

ECJ says Italy cannot restrict state liability for judges breaching EU law

On 24 November 2011, the European Court of Justice rendered its judgment in an infringement procedure (C-379/10) against Italy saying that national law may define the nature or the degree of breach but may not create more restrictive conditions for state liability for breaches of EU law, in particular liability may not be limited to cases of gross negligence. This also applies where a court whose decision is not open to appeal, by misinterpretation or wrongful assessment of facts or evidence, violates EU law.

READ MORE *(click to open)*:

ECJ press release: [EN](#) [FR](#) [DE](#) [ES](#) [EL](#) [IT](#) [PL](#) [RO](#)

Judgment: [FR](#) [IT](#)

CFE produces Opinion Statement on evidential requirements of the ECJ in infringement proceedings

The statement concerns the case C-105/08 Commission v. Portugal decided on 17 June 2010 in which the European Court of Justice imposed strict evidential requirements on the European Commission which, in the view of the CFE ECJ Task Force who drafted the Opinion Statement, the Commission is hardly able to meet in practice, thereby hindering the Commission in ensuring the effective application of EU law.

READ MORE *(click to open)*:

CFE Opinion Statement: [EN](#)

CUSTOMS

Commission updates list of national contact points for Single Authorisation for Simplified Procedures

The list contains the contact points with the customs authorities of Member States to which applications for a Single Authorisation for the local clearance or the Simplified Procedure must be made.

Comprehensive practical guidance on the implementation of Single Authorisation for Simplified Procedures is available in an e-learning course for customs officials and economic operators. The course covers the SASP context and key concepts, the application and authorisation process and the operation and management of SASP.

READ MORE *(click to open)*:

List with national customs contact points: [EN](#)

Download portal for European Customs and Taxation e-learning courses: [EN](#) (other language versions available)

Commission requests Italy to review its judicial practice on remission and repayment of duties

On 24 November 2011, the European Commission formally requested Italy to implement proper appeal procedures on requests for remission or reimbursement of customs duties. Italy does not allow, in certain cases, a judicial review for negative decisions on requests for the remission or reimbursement of customs duty. According to Italian highest level of jurisprudence, given the specific circumstances of these decisions, they cannot be contested because they are supposedly of a political nature. This is in contradiction to the EU Customs Code (Art. 239), according to which businesses finding themselves in a special situation may request from the national customs administrations a remission or reimbursement of their customs debt. Art. 243 Customs Code, as well as general principles of EU law, provide for a right of appeal of any decision issued by a national customs authority. The Commission believes that there is no exception to this right, and that businesses must be able to appeal all kind of decisions unfavourable to them. Therefore, the above mentioned practice puts Italy in breach of EU law. The request to Italy takes the form of a reasoned opinion, the second step of an infringement proceeding.

READ MORE *(click to open)*:

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

STATE AID

ECJ decides that Gibraltar tax reform favouring letterbox companies is unlawful state aid

On 15 November 2011, the European Court of Justice decided joined cases C-106 and 107/09 P that a tax system designed in such a way that offshore companies avoid taxation constitutes a State aid scheme that is incompatible with the internal market. The Court thereby prohibits the UK from implementing a corporate tax reform in Gibraltar proposed in 2002. The European Commission had rejected that reform in 2004 but was overruled by the EU General Court (formerly Court of First Instance) in 2008. The ECJ in turn overruled the General Court in an appeal filed by the Commission and Spain. The reasoning concerns in particular the question of a selective advantage. The ECJ found that the tax reform would confer such advantage to offshore companies. The selectivity follows from the fact that the privileged companies can be identified as a group that has certain characteristics. These were, in the case at issue, that they have no staff and occupy no office space. Advocate-General Niilo Jääskinen had pleaded against classifying the planned Gibraltar rules as a selective advantage (see [CFE European Tax Report 4/2011](#), p.6).

READ MORE *(click to open)*:

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Judgment : [EN](#) [FR](#) [DE](#) (other language versions available)

Opinion Advocate-General Jääskinen: [EN](#) [FR](#) [DE](#) (other language versions available)

AUDIT

Commission proposes new Audit Directive and Regulation containing far-reaching changes for professional firms

On 30 November 2011, the European Commission officially published its controversial proposals for an Audit Directive and Regulation. The points that have caused most sensation in the preliminary stage (prohibition to provide tax advisory services to audit clients, mandatory change of audit firm after 9 years) are contained in the [Regulation](#) which would apply to statutory audits of public interest entities (listed companies, banks, insurances). The idea to impose joint audits has however been dropped by the Commission.

The [Directive](#) would apply to all audits and contains relevant changes to the current "8th Directive" 2006/43/EC:

- anyone will in the future be able to hold shares or voting rights in audit firms (provided that this does not conflict with Art.22 on independence);
- audit firms will be able to provide audits cross-border if the leading partner in the audit is approved in the member state where the audit takes place; this member state may require the firm to register but the firm needs no authorisation;
- individual auditors will be able to operate cross-border on a temporary basis. They may be required to make notification to the host member state's competent authority but need no authorisation;
- contractual clauses according to which a third party influences the choice of the audit company are prohibited;
- simpler SME audits;
- public authorities assume more responsibilities presently held by professional bodies.

READ MORE (click to open):

Regulation: [EN](#) [FR](#) [DE](#)

Directive: [EN](#) [FR](#) [DE](#) (other language versions available)

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

More information and documents: [EN](#)

OTHER TAX POLICY

Commission publishes 2012 work programme

On 15 November 2011, the European Commission adopted its work programme for 2012. The annex to the document lists, among others, the initiatives envisaged in the area of taxation in the following years of which the 2014 overhaul of the VAT system is the most significant.

READ MORE (click to open):

Commission work programme: [EN](#) [FR](#) [DE](#)
(Commission website where other language versions are available: [EN](#))

Annex: [EN](#) [FR](#) [DE](#)

"Road maps": [EN](#)

Tax revenues stabilise in OECD countries in 2010

On 29 November 2011, OECD published new data showing that the majority of its members' governments have managed to stabilise their tax to GDP ratio, with the average moving up slightly from 33.8% in 2009 to 33.9% in 2010 which is still low compared to the pre-crisis average of 35.2% for 2007. Historically, tax-to-GDP ratios rose during the 1990s and the highest ratio on record was 35.3%, in 2000. They fell back slightly between 2001 and 2004, but then rose again between 2005 and 2007 before falling back following the crisis.

The proportion of tax revenues accounted for by social security contributions rose from 25% to 27% between 2007 and 2009 whereas the shares of taxes on corporate income and capital gains fell from 11% to 8% over the same period. The shares of the other major tax categories were largely unchanged. Denmark has the highest tax-to-GDP ratio among OECD countries (48.2% in 2010), followed by Sweden (45.8%) while Mexico (18.7% in 2010), Chile (20.9%) and the United States (24.8%) have the lowest tax-to-GDP ratios among OECD countries.

READ MORE (click to open):

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

IMPRESSUM

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