



European Tax Report Confédération Fiscale Européenne (CFE)

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CFE FORUM INFORMATION ACROSS BORDERS In Indirect and Direct Tax

This year's CFE Forum will take place on Thursday 15 April 2010 from 9:00 hrs to 17:15 hrs at the Representation of Saxony-Anhalt to the European Union, Boulevard Saint Michel 80, 1040 Brussels.

The overall aim is to look at the developments that have taken place in the past 12 months to bring about greater exchange of information across borders, greater transparency within borders and a willingness to pursue taxation liabilities across borders more effectively. While the debate usually focuses on fighting fraudulent practices and restoring public finances, the impacts of these initiatives on businesses are often considered less closely. Those include a threat to confidentiality of business data and to the principle of fair proceedings as well as possibly imposing administrative burdens on businesses which urgently need to grow in the wake of the economic crisis.

The Forum seeks to examine the impact of the desire for greater information both in direct tax (morning session) and indirect tax (afternoon session) matters.

To register, please send an e-mail to the CFE Brussels office at the following e-mail address:

Brusselsoffice@cfe-eutax.org

We look forward to welcoming you to the CFE Forum 2010 in Brussels.

More information will be available soon.

READ MORE (click to open):

Invitation

EN

NEWS - INDIRECT TAX

EP's ECON Committee calls for financial transaction tax

On 23 February 2010, the European Parliament's ECON (economic and monetary affairs) Committee pronounced that the EU could go alone introducing a financial transaction tax as worldwide (or G20-wide) action may prove unachievable. The aim of such a tax would be to make the financial industry carry the costs of the financial crisis and to render speculation and excessive risk-taking less attractive. The ECON Committee asks the Commission for an impact assessment on whether the objective of such a tax to prevent a similar future crisis could be met. The Committee however stresses that the banks' ability to provide financing for the real economy must not be harmed by such a tax. The tax revenue could contribute to the EU budget where it could be used to help developing countries fight climate change, possibilities that the Council and the Commission should consider. The report is due to be voted by the plenary on 24 or 25 March 2010.

READ MORE (click to open):

Press release

EN

MEPs says electronic and paper invoices should be treated equally

On 22 February 2010, the European Parliament's ECON Committee discussed the draft consultation report by David Casa (EPP, Malta) on the proposed amendment to the VAT rules for invoicing. The committee was in favour of treating electronic and paper invoices equally, a step some Member States like Sweden have already taken. According to the report, this had not resulted in an increase of fraud. In Sweden, 40% of all invoices are already sent as pdf files. Keeping of invoices should be limited to six years, according to the Commission this is an average of the different regulations in Member States. Various amendments have been proposed, some MEP seek to introduce a shorter period for keeping documents.

A vote of the ECON committee is expected on 16 March 2010 while the plenary would vote in April.

Reform of excise duties on cigarettes

On 16 February 2010, the Ecofin Council revised the directives laying down excise duties for cigarettes and tobacco products, increasing the minimum rates.

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Press Release

EN

are unable to recover any foreign VAT. Many businesses said that they recover less than 25% of the VAT incurred in foreign countries and a third said that these difficulties influence decisions on investment. OECD views these responses as a sign that businesses would favour improved communication with tax administrations. Greater harmonisation and standardisation of the procedures would speed up and improve these repayment systems. The OECD Committee for Fiscal Affairs announced it would continue to work on these issues with a view to helping countries improve their VAT relief procedures whilst at the same time providing safeguards against fraud.

READ MORE (click to open):

OECD report

EN

VAT exemptions for Lithuania in timber and insolvencies

Lithuania may continue to make use of its existing derogation from the VAT Directive, making the recipient liable for VAT in the timber sector and where goods and services are offered by a taxpayer who is in insolvency or restructuring proceedings. This has been decided by the Ecofin Council on 16 February 2010. The exemption which should facilitate tax collection and tax fraud applies until the end of 2012.

READ MORE (click to open):

Council decision

EN FR DE

OECD releases draft Guidelines on the application of VAT/GST to international trade in services and intangibles for comments

On 5 February 2010, the OECD Committee on Fiscal Affairs has invited public comments on the draft Chapter II of the International VAT/GST Guidelines. These draft guidelines consider which jurisdiction has the taxing rights in cases where services and intangibles are supplied internationally. The Committee has already agreed the principle that the jurisdiction with the taxing rights is the one in which consumption takes place but there frequently need to be proxies to determine consumption. The draft guidelines propose that, as a main rule, the location of the customer is the most appropriate proxy to determine consumption for business-to-business supplies. The draft assumes that all supplies are legitimate and with economic substance and that there is no artificial tax avoidance or tax minimisation taking place. Further, the guidelines address services and intangibles received by enterprises with a single location only. Enterprises with multiple locations, artificial minimisation and avoidance issues will be dealt with later in separate chapters with possible exceptions to the main rule. The Committee invites interested parties to send their comments on this draft before 30.6.2010.

80% of foreign VAT cannot be recovered, says OECD report

5 February 2010: Many businesses incur VAT on costs in countries where they are not carrying out any taxable activity or are not established. Although most OECD countries have introduced procedures to refund this VAT through specific reclaim procedures and some allow recovery through direct VAT registration or zero-rating of supplies to foreign business, many businesses cannot always recover the VAT on these costs. According to a study conducted by the OECD, 72% of the businesses surveyed said that they found these procedures difficult and that more than 20%

READ MORE (click to open):

Draft guidelines, Chapter II **EN**

Full OECD press release **EN FR**

NEWS - DIRECT TAX

OECD releases draft documentation for cross-border tax claims for comments

On 8 February 2010, the OECD has released for public comment draft documentation for implementing a streamlined procedure for portfolio investors to claim reductions in withholding rates pursuant to tax treaties or domestic law in the source country. The draft documentation was developed to provide standardised documentation that could be used by countries that wish to adopt the “best practices” described in a report released by the OECD for public comment on 12 January 2009. Interested parties are invited to submit their comments on the draft documentation by 31 August 2010.

READ MORE *(click to open)*:

Full news release [EN](#) [FR](#)

Draft documentation [EN](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

MEPs call for more binding tax cooperation to tackle banking secrecy and fraud

On 10 February 2010, the European Parliament adopted four tax-related resolutions encouraging a general exchange of information for all taxes in order to close tax havens and prevent bank secrecy from being invoked.

Administrative cooperation and tax fraud:

The EP supports the Commission proposal to introduce a general system of automatic exchange of information between Member States for all taxes, except VAT and excise duties where similar rules are in place. The EP suggests technical improvements designed to lift bank secrecy more efficiently and is in favour of giving powers to the Commission, under the control of the Council and Parliament, to clarify the scope of the information to be exchanged and of reinforcing the personal data protection provisions. The directive has to be adopted unanimously by the Council, Art.115 TFEU only requires consultation of the EP. Rapporteur was the Spanish social democrat Magdalena Alvarez.

Assistance in recovery of tax claims

This resolution expresses the EP’s support for the proposal aimed at increasing the rate of cross-border claim recovery throughout the EU. The EP also asks for an appropriate follow-up system for cases where a Member State refuses assistance and removes the threshold proposed for exchanging information concerning refunds of taxes. Rapporteur was Theodor Dumitru Stolojan from Romania (EPP). The Ecofin Council of 19 January 2010 had found to an agreement in this matter but said it was going to await the opinion of the Parliament which has now been given (see European Tax Report 1/2010).

Good governance in tax matters

This resolution deals with the broad issue of tax cooperation in the EU and comes as a follow-up to several initiatives both in the EU and at the international level. The resolution condemns tax havens, urges Member States to prioritise the fight against them and calls for an EU public register listing the names of individuals and undertakings having set up companies and accounts in tax havens. It puts a strong emphasis on the need to promote the automatic exchange of information and an end to banking secrecy. The resolution also requests more to be done on VAT-related fraud and proposes the use of incentives and sanctions to improve tax governance. Rapporteur

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

was the Italian social democrat Leonardo Domenici. Before the vote, the French EPP member Jean-Paul Gauzès had unsuccessfully tried to amend the passage demanding exchange of information to replace bank secrecy in all circumstances.

Carousel VAT fraud

Finally, the EP addressed carousel VAT fraud by using the system of greenhouse emission trading. The Commission proposed that Member States can choose to apply the reverse-charge mechanism to the transactions involving emission allowances. The EP's legislative resolution supports the Commission's proposal of October 2009, whilst introducing amendments aiming at reducing the administrative burden on businesses. Rapporteur was EPP member David Casa from Malta. On 2 December 2009, the Ecofin Council had reached unanimous political agreement on the draft directive (see European Tax Report December 2009/January 2010).

READ MORE (click to open; please see the language bar for different language versions):

Directive on administrative cooperation	EN
Mutual assistance in tax recovery	EN
Good governance in tax matters	EN
Reverse charge mechanism	EN

Andorra escapes the grey list

Andorra is now eligible for removal from the OECD "grey list" after having signed seven exchange of tax information agreements according to OECD standards on 24 February 2010 with the Nordic countries. According to the OECD criteria, countries that have signed at least 12 agreements with other countries are not considered uncooperative. Andorra has been the last European grey-listed country.

READ MORE (click to open):

OECD website

[EN](#) [FR](#)

STATE AID

Greece must claim back tax exemptions

On 24 February 2010, the European Commission has decided to take Greece to the ECJ on the basis of Article 108(2) TFEU for failing to comply with a Commission decision of July 2007 in which Greece was ordered to recover state aid unlawfully granted to hundreds of companies through tax exemptions. The Greek law allowed companies to deduct up to 35% of profits in 2003 and 2004 from their tax base for projects in a series of sectors. The companies had to use their tax exempt income to finance expenses, such as the purchase, construction and expansion of factories, buildings and equipment, the purchase of vehicles, relocation, leasing costs, studies, training and many others. Companies could claim this benefit directly from the tax authorities as the aid scheme was part of the Greek tax system.

In 2007, the Commission had found that the above-mentioned state aid scheme was incompatible with the EU state aid rules. To re-establish the situation prior to the granting of the aid, the Commission decision required Greece to immediately and effectively recover the incompatible aid, including interest, from the beneficiaries.

READ MORE (click to open):

PDF:	EN FR DE
Commission decision:	EN

Commission sceptic about German rules on fiscal loss carry-forward for ailing companies („Sanierungsklausel“)

On 24 February 2010, the Commission opened a formal investigation under the EU (Treaty of Nice) state aid rules into a German tax advantage granted to ailing companies. The "Sanierungsklausel" relates to corporate income taxation of companies where there are significant changes in the shareholding. It only applies to ailing companies that have potential for a turn-around, providing them with the possibility to carry forward fiscal losses; taxable income in future tax years may be reduced by setting-off the losses incurred in the past. Under the general German rules, such loss carry forwards would have been forfeited if there were significant changes in the shareholding. The Sanierungsklausel was adopted in July

STATE AID

2009 and applies retroactively since 1 January 2008. Originally, the provision should have expired on 31 December 2009. However, at the end of 2009, the German government adopted a law making the measure permanent.

The German authorities consider that EU state aid rules do not apply on this measure. The Commission however is concerned that the measure may favour ailing companies in comparison to healthy companies, doubting the compatibility of the measures with the EU Guidelines on Rescue and Restructuring aid: Both healthy and ailing companies could be loss making, but only the latter are eligible for the privilege granted by the Sanierungsklausel. So far, Germany has not managed to convince the Commission that the measure is justified by the nature and general scheme of the German tax system. However, the opening of an in-depth investigation does not pre-judge the outcome of the procedure but it gives interested parties the possibility to comment.

READ MORE (*click to open*):

Press Release

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EU INSTITUTIONS

New European Commission in office

On 10 February 2010, the 27 new Commissioners including Commission President José Manuel Barroso assumed work after the Commission had been approved by the European Parliament the day before. According to Art.17 (7) EU, the European Parliament can only approve or refuse the Commission as a whole. For this reason, the Bulgarian Commissioner-designate Rumiana Jeleva had stepped down in favour of now-Commissioner for International Cooperation, Humanitarian Aid and Crisis Response Kristalina Georgieva after the majority of MEPs indicated that they would not vote for Jeleva.

New Commissioner for Taxation and Customs Union is the Lithuanian Algirdas Šemeta. Head of Šemeta's Cabinet is Stephen Quest from the UK.



READ MORE (*click to open*):

CV of Algirdas Šemeta: [EN](#)

Cabinet of Algirdas Šemeta: [EN](#)

OTHER NEWS

Commission publishes working paper on the financial crisis and tax policy

On 29 January 2010, the Commission has published its working paper “The 2008 Financial Crisis and Taxation Policy”, a 45-page analysis of how taxation may have contributed to the crisis and in what way it may serve to prevent a future crisis.

READ MORE (*click to open*):

Full document

EN

Committee is in opposition, following Belgian liberal MEP Dirk Sterckx. Whatever the outcome of the vote in the plenary, so far there have been no signs of a sufficient majority in the Council for an amendment: According to press information, the German and the UK governments are in favour of the Commission proposal, while Belgium, France, Greece, Italy, Portugal and Spain are against it.

The Commission proposal COM(2009)83 dates from 26 February 2009 and was originally designed as a “fast-track measure” for reducing bureaucracy but the EP vote has been repeatedly postponed.

READ MORE (*click to open*):

Commission proposal of 26 February 2009 for a micro-entities exemption:

EN FR DE

ECON opinion of 19 October 2009 against a micro-entities exemption:

EN FR DE

JURI report of 28 January 2010 in favour of a micro-entities exemption:

EN FR DE

Accounting: European Parliament postpones vote on optional exclusion of “micro-entities” from the EU accounting rules

At the last minute, the European Parliament postponed a vote scheduled for 25 February 2010 on the possibility of Member States to exclude so-called micro-entities from the European Accounting Directive (4th Company Law Directive, 78/660/EEC). According to the definition of the European Commission, “micro-entities” are limited liability companies that do not exceed two of the following three criteria: Annual net turnover of € 1 million, a balance sheet total of € 500,000 and ten employees. An exclusion from the 4th Directive would mean that Member States would be free to abolish accounting requirements for these entities. The Commission sees no need for harmonised European rules for these companies to file (and publish) their annual accounts as they generally do not operate cross-border. It is argued that “micro-entities” could save a high amount of costs. Opponents of this idea argue that the enterprises need to collect this information for other purposes like tax and statistics, so that they would in fact save very little costs but risk to lose overview on their own financial situation and on their shareholders’ and management’s rights and obligations. This is why the Legal Affairs (JURI) Committee has added the requirement that micro-entities must keep records that show the company’s business transactions and financial situation “as a minimum standard”.

A strong supporter in the Parliament is the German MEP Kaus-Heiner Lehne (EPP), chairman of the JURI Committee and rapporteur. While the JURI Committee has joined Lehne on 28 January 2010, the ECON

IMPRESSUM

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