CFE
European Tax Report
European Professional Law Report
August & September 2015

CFE EVENTS

CFE PAC Conference: "Big Data – A threat to taxpayer rights?" on 13 November 2015 in Amsterdam

Will new tax transparency rules and the use of IT in tax administration facilitate compliance or will they discourage taxpayers from making full use of their rights? Do taxpayer rights need formal recognition? How will the role of tax advisers change?Speakers from the OECD, national tax administrations, academics and tax professionals will discuss these questions at CFE´s 8th conference on tax advisers´ professional affairs.

READ MORE *(click to open):*

- Programme and registration : **EN**

DIRECT TAX

OECD finalises BEPS project

On 5 October 2015, the OECD presented its final Recommendations on the 15 "Actions" announced in July 2013 to counter tax base erosion and profit shifting (BEPS) by corporates. The Recommendations are to be endorsed by the G20 leaders in Antalya on 15/16 November 2015.

The final BEPS Recommendations contain no specific recommendations on the digital economy (BEPS 1), as the OECD concludes that its typical BEPS risks (e.g. the question of permanent establishment status of warehouses or transfer pricing related to intangibles) are not specific to the digital sector and should be dealt with in the context of other BEPS actions. The OECD does not recommend at this stage any of the specific options discussed previously, like a "significant economic presence" as a nexus for taxation of digital businesses, withholding taxes on digital transactions or an equalisation levy. In VAT, the OECD proposes destination-based taxation for B2C-transactions, as applies in the EU.

On hybrid mismatch arrangements (BEPS 2), the OECD proposes changes in national laws that link the domestic tax treatment to the foreign tax treatment. The OECD refrains from commenting on whether countries should introduce CFC (controlled foreign company) rules (BEPS 3) or mandatory reporting rules for certain tax arrangements (BEPS 12), but gives recommendations for countries that decide to do so. Interest deductions (BEPS 4) should be directly linked to income from economic activities of the same entity. On harmful tax practices (BEPS 5), a minimum standard on defining substantial activity in a country offering a preferential regime is proposed and consensus on the "nexus" approach of linking a preferential treatment of IP rights to actual research and development undertaken in the same country has been reached. A newly proposed measure is the mandatory exchange of a defined set of information on certain tax rulings, similar to the exchange just adopted at EU level (see item below).Changes to the OECD Model Convention should establish a minimum standard against tax treaty abuse (BEPS 6) and refine the concept of permanent establishment (BEPS 7). Changes to transfer pricing rules aim at strengthening the arm´s length principle and include particular consideration on intangibles, risk allocation and service fees.Transfer pricing documentation should be harmonised using a three-tier standard of master file, local file and country by country reporting template; the latter is meant as a minimum standard and to be exchanged among tax administrations only (BEPS 13).Noteworthy seems the development of a binding arbitration (BEPS 14) framework agreed by 20 countries, including the largest European economies, Japan and the US, going further than the suggested minimum. Dispute resolution and the changes related to BEPS Actions 2, 6 and 7 should be adopted via a multilateral legal instrument, currently developed by about 90 countries, which should be ready in 2016.

READ MORE *(click to open):*

- Press release, 5 October 2015: **EN**, **FR**,**ES**,**DE**
- Explanatory Statement 2015 : **EN**, **FR**, **ES**, **DE**
- All final reports, 5 October 2015: **EN**
- Information brief for journalists: **EN**, **ES**
- Memo: **EN**, **FR**
- FAQs: **EN**, **FR**, **ES**
- "10 myths and facts about BEPS": **EN**, **ES**
- Press conference and technical presentation, 5 October 2015: **EN**

EU agrees on mandatory exchange of information on tax rulings/APAs

On 6 October 2015, the EU Ecofin Council agreed a change to the EU Directive on Administrative Cooperation, introducing mandatory exchange of information on cross-border tax rulings and advance pricing agreements issued from 2012 onwards between EU member states. The exchange will be effective as of 2017.Contrary to the European Commission´s legislative proposal of 18 March 2015, the Commission will not receive the same information as the member states; it will only receive information enabling it to monitor whether the exchange actually takes place and to develop a secure central directory for the data exchanged. This change introduced by the Council presents a significant weakening of the original proposal, as it will not allow the Commission to assess the tax rulings from a state aid control point of view and to monitor trends in tax rulings policies.Moreover, the information exchange on past rulings will only cover 5, not 10 years, as originally proposed. Rulings and APAs issued, amended or renewed in 2012 and 2013 only have to be communicated if they were still valid on 1 January 2014. Finally, member states agreed an optional exemption of rulings or APAs issued before April 2016 to companies with an annual net group turnover not exceeding € 40 million. The Directive will be formally adopted at one of the next Council meetings. The European Parliament´s opinion which is still required but not binding has been scheduled for 26 October 2015.

READ MORE *(click to open):*

- Council press release, 6 October 2015 : **EN**
- Commission press release, 6 October 2015 : **EN** (FR available)
- Text agreed: **EN**

CJEU prohibits different tax treatment of dividends from domestic and foreign subsidiaries by French law

On 2 September 2015, the EU Court of Justice (CJEU) decided in the French preliminary ruling case C-386/14, Steria, that a differentiated taxation of dividends received by the parent company of a tax-integrated group depending on where the subsidiaries are established violates the freedom of establishment.Under French tax law, a tax-integrated parent company is entitled to neutralisation as regards the add-back of a proportion of costs and expenses, while such neutralisation is refused where dividends originate from subsidiaries from another member state, which, had they been resident, would have been eligible for group taxation.

READ MORE *(click to open):*

- Press release: **EN**, **ES**, **DE**, **FR**, **IT**, **NL**, **PT**
- Judgment: **EN** (all EU languages)
- Opinion of Advocate-General Kokott : **EN** (all EU languages)

CJEU dismisses Dutch tax treatment of dividends paid to non-residents

On 17 September 2015, the CJEU delivered its judgment in the joined Dutch preliminary ruling cases Miljoen and others, C-10, 14 and 17/14. The Court held that member states may not impose a withholding tax on dividends distributed by a resident company both to resident taxpayers and non-resident taxpayers where that tax contains a mechanism for deducting or reimbursing the tax withheld only available for resident taxpayers, while for non-resident taxpayers, both natural persons and companies, the tax withheld is a final tax. This results in the final tax burden of non-residents being greater than that of resident taxpayers.

READ MORE *(click to open):*

- Judgment: **EN** (all EU languages)
- Opinion of Advocate-General Jääskinen: **EN** (all EU languages)

CJEU decides on tax deduction of gifts made by a foundation to foreign beneficiaries

On 17 September 2015, the CJEU rendered its judgment in the Austrian preliminary ruling case Familienprivatstiftung Eisenstadt, C-589/13 concerning interim tax charged on capital gains and income from the disposal of holdings of a resident private foundation. The ECJ found that where such foundation has the right to deduct from its taxable amount gifts to beneficiaries who have been subject to a tax on these gifts in the foundation´s member state, the same deduction has to be granted if the beneficiaries reside in another member state and are exempt, on the basis of a double taxation convention, from such tax.

READ MORE *(click to open):*

- Judgment: **EN** (all EU languages)

Commission asks France to facilitate dividend tax refund procedure for non-residents

On 24 September 2015, the European Commission decided to send a reasoned opinion to France, asking the country to amend its refund procedure for dividends deducted at source for non-residents. France requires non-resident taxpayers who have invested in companies established in France to provide proof of payment by the French paying agent of the amount deducted from dividends when they apply for reimbursement of the part not due. In the event of a complaint, non-residents are allowed less time to make their application, as their starting point is the time when the amount is deducted on distribution of the dividends, whereas for taxpayers resident in France it is the time the tax notice is received.The Commission believes that these provisions give rise to disproportionate procedures contrary to the principles of equivalence and effectiveness.

READ MORE *(click to open):*

- September infringement package: **EN** (10 other languages available)

Joint Transfer Pricing Forum work programme 2015 – 2019

On 24 September 2015, the European Commission published the work programme for 2015-2019 of the EU Joint Transfer Pricing Forum (JTPF), an advisory expert group to the Commission to find pragmatic, non-legislative solutions to practical problems posed by transfer pricing practices in the EU. Members of the Forum are representatives of each EU member state and 18 other organisations and businesses.The work programme includes an increased emphasis on economic analysis in transfer pricing, better use of modern companies‘ internal information systems and tools and making accessible the JTPF´s conclusions to a wider public. The latter responds to public criticism of transfer pricing as a possible tool for profit shifting. For the same reason, the Commission had admitted three NGOs as members to the JTPF earlier this year.

READ MORE *(click to open):*

- JTPF Work Programme 2015 - 2019: **EN**

INDIRECT TAX

Commission consults on VAT in cross-border e-commerce

On 25 September 2015, the European Commission opened a public consultation on modernising VAT for cross-border e-commerce. Stakeholders are invited both to evaluate the functioning of the current place of supply rules and the mini one stop shop (MOSS) regime for telecom, broadcasting and e-services, and to give their views on legislative proposals planned for 2016. The envisaged measures have been announced in the Commission´s Communication on a Digital Single Market of 6 May 2015:

- extending the mini one stop (MOSS) regime to all goods ordered electronically,
- introducing a common EU-wide VAT threshold,
- abolishing the small consignment VAT exemption for goods ordered online by private customers from non-EU suppliers, which is considered to lead to a competitive distortion to the disadvantage of EU suppliers, and
- allowing home country controls including a single VAT audit of cross-border businesses.Comments can be sent until 18 December 2015.

READ MORE *(click to open):*

- E-survey : **EN** (all EU languages)
- Commission impact assessment : **EN**, 8 July 2015

CJEU: Bodies of public law cannot be VAT taxable persons

On 29 September 2015, the CJEU decided in the Polish preliminary ruling case C-276, Municipality of Wrocław, that bodies governed by public law cannot be regarded as VAT taxable persons in so far as they do not satisfy the criterion of independence.

READ MORE *(click to open):*

- Judgment: **EN** (all EU languages)
- Opinion of Advocate-General Jääskinen: **EN** (all EU languages)

Commission requests Germany to amend VAT rules for travel agents

On 24 September 2015, the European Commission decided to sent a reasoned opinion to Germany, requesting it to amend its VAT legislation on the application of the special scheme for travel agents. The scheme allows the travel agent to set a so-called „price margin“ (the difference between the actual cost to the agent and the total amount, exclusive of VAT, to be paid by a traveller) as the taxable amount for VAT. According to current German VAT law, this margin scheme can be applied only to travel services provided to private end users. It also allows travel agents to set one single profit margin for all supplies of travel packages sold during a tax period.In a case concerning Spain, the CJEU had decided that this special scheme should also apply to businesses and that the travel agent should calculate the margin per travel service, and cannot make an overall calculation per tax declaration period (see **CFE European Tax & Professional Law Report September 2013**).

READ MORE *(click to open):*

- September infringement package: **EN** (10 other languages available)

CJEU decides on chargeable event and the chargeability of VAT for subscription-based consulting contracts

On 3 September 2015, the CJEU decided in the Bulgarian preliminary ruling case C-463/14, Asparuhovo Lake Investment, that the term ‘supply of services’ includes subscription contracts for the supply of consulting services to an undertaking, in particular those of a legal, commercial or financial nature, under which a supplier has agreed to be available to the customer during the term of the contract. For such contracts, the chargeable event and the chargeability of the tax occur upon the expiry of the period in respect of which the payment has been agreed, irrespective of whether and how often the customer has actually made use of the supplier’s services.

READ MORE *(click to open):*

- Jugdment: **EN** (all EU languages)

Commission publishes study on the VAT gap

On 4 September 2015, the European Commission published a study on the estimated VAT gap in 26 EU member states in 2013. The VAT gap is the difference between that amount of VAT that should have been collected and the amount actually collected. It is not only caused by tax fraud and evasion but also counts revenue lost to tax avoidance and insolvencies.The study notes a slight increase from 2012 to € 168 billion of lost revenues. Missing trader fraud, according to the Commission´s estimates in another study published in July 2015, accounts for EU-wide revenue losses between € 45 and 53 billion.2013 saw few changes in VAT rates. While VAT liabilities rose by 1.2%, collected revenues rose slightly less. The gap accounts for an average of 15.2% of the total VAT theoretically collectible in all countries surveyed which is almost no change compared to 2012. The average gap of all countries is 13.9%. While the VAT gap is lowest in Finland (4%), it stands at 41% in Romania.The study also contains calculations on the “policy gap” which is the portion of theoretically collectible VAT that is uncollected because of national policy decisions, i.e. to apply exemptions and reduced rates. While the amount “lost” to exemptions is typically higher than the amount lost to reduced rates, the study acknowledges that in some areas (e.g. financial services) the introduction of VAT would be difficult. The “actionable” policy gap, meaning the gap member states could realistically reduce by abolishing optional exemptions and reduced rates, is 13.4%. This amount is lowest in Denmark (1.8%) and highest in Spain (22.7%).

READ MORE *(click to open):*

- Press release: **EN** (DE FR available)
- FAQs: **EN**
- VAT Gap Study: **EN**
- Destination principle study, July 2015: **EN**

Financial Transactions Tax: reported progress and leaked papers on exemptions

Reportedly, there has been recent progress in EU Ecofin Council negotiations on the Financial Transactions Tax proposal that eleven EU member states are pursuing by way of enhanced cooperation. On 12 September 2015, France and Austria mentioned "considerable progress" and an agreement on basic principles, aiming at covering as many transactions as possible at a low rate. It was said that a decisive step would be reached in October. As technical details still need to be worked out, the envisaged starting date of January 2016 is no longer realistic. Meanwhile, German Green MEP Sven Giegold has published two internal discussion papers for the Council Indirect Taxation Working Party. The papers tabled by a number of member states consider the possible impact of the Financial Transactions Tax on pension funds and life insurances and on enterprises of the "real economy" that enter into derivatives agreements to hedge their business risks, and possible solutions to negative consequences of the application of the tax to these products, including (partial) exemptions and a lower tax rate.

READ MORE *(click to open):*

- Paper on real economy impacts: **EN**
- Paper on pension funds and insurance impacts: **EN**

Commission consults on excise rules for alcoholic beveragess

On 28 August 2015, the European Commission launched a public e-consultation to assess whether some of the rules on excise duty on alcoholic beverages should be changed to fight tax fraud and reduce the sale of counterfeit alcohol. Among the issues under discussion are exemptions and common reduced rates, particularly for small producers and home-brewers. The consultation will be open until 27 November 2015. There are different questionnaires for operators in the sector and for other interested stakeholders.

READ MORE *(click to open):*

- Press release: **EN** (DE, FR available)
- Consultation website : **EN** (DE, FR available)
- Consultation document : **EN**

CJEU rules on VAT exemption for the goods for provisioning and fuelling vessels

On 3 September 2015, the CJEU decided in the Lithuanian preliminary ruling case Fast Bunkering Klaipėda, C-526/13, that a VAT exemption for the provision of goods for provisioning and fuelling vessels does not apply, in principle, to supplies of these goods to intermediaries acting in their own name, even if, at the date on which the supply is made the ultimate use of the goods is known and duly established.

READ MORE *(click to open):*

- Judgment : **EN** (all EU languages)

OTHER TAX POLICY

Deloitte BEPS country scorecards

On a public website, the firm Deloitte has provided scorecards providing summaries of 43 different countries' perspectives of the BEPS Actions. These contain chapters on BEPS legislation, administration´s assessing practices, current governments´ positions and plans, public perspective and unilateral anti-BEPS action taken.

READ MORE *(click to open):*

- Deloitte Country Scorecards: **EN**

Report on tax reforms in EU member states

On 28 September 2015, the European Commission´s Directorates General for Economic and Financial Affairs (ECFIN) and Taxation and Customs Union (TAXUD) have jointly published a report outlining how EU member states have performed in implementing the Commission´s tax policy recommendations. Among the main ones are increasing VAT compliance, reducing the tax burden on labour, basing housing taxation on recurrent taxes rather than on transaction taxes and increasing environmental taxes. Both in housing taxation and in corporate income taxation, the Commission recommends reducing the favourable treatment of debt over equity (e.g., in housing, generous tax reliefs for mortgages). Finally, the report names

good practices on tax reliefs for promoting research and development.

READ MORE *(click to open):*

- Full report: Tax Reforms in EU Member States 2015: **EN**
- Press release in European Commission´s "Midday Express": **EN** (FR available)
- Infographics: **EN**
- FAQs: **EN**

OECD study on tax treatment of SMEs

On 5 September 2015, the OECD published a report examining the different ways of how tax systems try to support the creation and growth of SMEs in 39 different OECD and G20 countries. The report finds that in many countries, there are tax incentives for SMEs to incorporate and to distribute income in the form of capital. It notes that tax rules that apply to all businesses may disproportionately affect SMEs, particularly SMEs in their first years of operation or that are credit-constrained, and that tax compliance costs are proportionately higher for SMEs than for larger firms. The report also makes recommendations as to the design of tax preferences and simplifications for SMEs.

READ MORE *(click to open):*

- Press release: **EN**
- Report (read-only): **EN**

OECD publishes comparative study on tax administrations, including involvement and regulation of tax advisers

On 11 August 2015, the OECD published an update of its comparative report on tax administration, surveying 56 countries including all OECD, EU and G20 countries. The series identifies fundamental elements of modern tax administration systems and uses data, analyses and examples to identify key performance trends, recent innovations, and examples of good practice.60% of revenue bodies report staff reductions, especially in the UK, Australia and the US. Administrations have invested significantly in digital on-the-go services with Austria, Finland, Singapore and Norway spending the largest percentage on IT. Although 95% of all revenue bodies offer the opportunity to file returns electronically, and over two thirds achieve usage over 75%, the report finds that more could be done to offer a better integrated digital service. The total tax debt for OECD member countries (two countries left aside) stood at 11.1% of annual net revenue collections, the best performers being Estonia, Ireland, Japan, Korea, Norway, Sweden and Switzerland. Over 85% of revenue bodies have adopted the structured 'co-operative compliance model' advocated by the OECD for managing their largest taxpayers. One-third use similar arrangements to manage the tax affairs of high net worth individuals. In VAT, many revenue bodies successfully use systems to process bulk invoice data for compliance risk management and fraud detection.The report also contains a chapter (Chapter 8) on the role tax advisers and other "intermediaries" can play in increasing tax compliance, if well informed and involved by tax administration, and the existence of national regulation of tax advisers.

READ MORE *(click to open):*

- 2-page flyer: **EN**
- Press release: **EN**
- Full Report Tax Administration 2015: **EN**

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

OECD Implementation Handbook for Automatic Information Exchange Standard

On 7 August 2015, the OECD published practical guidance to assist government officials and financial institutions in the implementation of the OECD/G20 "global" Common Reporting Standard (CRS) on Automatic Exchange of Financial Account Information which the OECD had presented in February 2014 (full version in July 2014) and which has been included EU law in January 2015. The Implementation Handbook specifies which of the CRS´s options are granted under the EU Directive and identifies areas for alignment with FATCA. The OECD guidance is not legally binding but could contribute to a more uniform application of the CRS if implemented consistently. It addresses the operational and transitional challenges resulting from the staggered implementation of the Standard. It also contains answers to frequently asked questions from business and governments. As the OECD points out, the Handbook is intended to be a "living" document and will be updated on a regular basis.

READ MORE *(click to open):*

- Implementation Handbook, 7 August 2015: **EN**
- CRS Report, February 2014: **EN**
- Press release, full CRS, 21 July 2014: **EN**, **FR**

OECD Model Protocol for inclusion of automatic and spontaneous information exchange in bilateral treaties

On 7 August, the OECD published a Model Protocol to Tax Information Exchange Agreements (TIEAs). This report provides the basis for jurisdictions wishing to extend the scope of their existing bilateral TIEAs to also cover the automatic and/or spontaneous exchange of tax information, without accessing the Multilateral Convention.

READ MORE *(click to open):*

- Model protocol: **EN**

German court prohibits cross-border information exchange

On 7 September 2015, the Cologne Court of Finance, a first-instance court, prohibited by way of interim relief the exchange of information on a multinational´s activities between the German tax administration and its counterparts in Australia, Canada, France, Japan and the UK. As the Court held, the provision of information on the corporate structure, the tasks, functions and remunerations, the resulting taxation and further details, and the request for corresponding information from the other countries violates the applicant´s right to tax secrecy. The exchange was not considered justified because it was not necessary, as the countries could obtain the information by other means. The decision states that it is not sufficient that the exchange may be the easier or quicker way to obtain the information. The relevance of the information for taxing a company must be established in every individual case; there could be no “fishing expeditions”. An interest in examining the business models of the digital economy is thus not sufficient.

READ MORE *(click to open):*

- Decision: **DE**

OECD Global Forum releases new compliance ratings for Poland, Lithuania and others

On 3 August 2015, the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes released new compliance ratings for 10 countries. These concern Albania, Burkina Faso, Cameroon, Dominican Republic, Lesotho, Lithuania, Pakistan, Poland, Sint-Maarten and Uganda. Of the European countries, Lithuania was given the overall mark “compliant”, while Poland was found “largely compliant”. Albania has only completed the first phase of the rating process, dealing with the legislative and administrative framework, and will now move to the second phase dealing with the exchange of information in practice. The Global Forum also updated a number of ratings of other countries.

READ MORE *(click to open):*

- OECD press release (some country names missing on 10 August 2015): **EN**
- All peer review reports: **EN**

OECD recommends that tax authorities should have access to AML transactions reports

On 16/17 September 2015, the OECD held its 4th Forum on Tax and Crime and afterwards released its report titled “Improving Co-operation between Tax and Anti-Money Laundering Authorities: Access by tax administrations to information held by financial intelligence units for criminal and civil purposes”. The reports analyses the levels of co-operation between the authorities in one state combatting serious financial crimes and assesses various models for the sharing of suspicious transaction reports. The OECD recommends that tax administration should have the fullest possible access to these reports, to fight illicit financial flows, notably tax evasion, money laundering, bribery and corruption.“Financial intelligence units” are the bodies to which, according to EU Anti Money Laundering Directive and the FATF Guidelines, suspicious transactions should be reported. According to the recently adopted 4th EU Anti Money Laundering Directive, member states have to exempt tax advisers from a reporting obligation where they are tasked with ascertaining a client´s legal position or defending or representing him/her in or concerning judicial proceedings.

READ MORE *(click to open):*

- Report: **EN**
- Press release: **EN**
- 4th OECD Forum on Tax and Crime-Meeting webpage: **EN**
- Statement of outcomes: **EN**
- Agenda: **EN**

Danish treasury faces tax fraud damage of € 830 million due to false double tax refund claims

On 26 August 2015, it emerged that the Danish revenue, since 2012, has lost an estimated € 830 million to tax fraudsters using on-line forms for refund of taxes allegedly paid on dividends from non-existing shareholdings in Danish companies. An estimated 2,000 false requests were made, using falsified documents. Shareholders in Danish companies are subject to a 27% tax on dividends but non-residents, under double taxation agreements, are entitled to a refund of taxes paid. Reportedly, there has been no cross-checking with the companies in which the alleged shares were held. The rapid increase in tax refunds to foreign shareholders had not been left unnoticed by the Danish treasury´s internal audit which already reported this incidence in 2013.

READ MORE *(click to open):*

- EU Observer article: **EN**

STATE AID

Commission finds that Italian tax reductions for companies in areas affected by natural disasters were partially illegal

On 14 August 2015, the European Commission concluded that certain Italian measures reducing company taxes and social security contributions in areas affected by natural disasters also benefitted companies that suffered no damage and overcompensated companies beyond the damage suffered. While EU state aid rules allow public measures to help companies that have suffered damage from natural disasters, these have to remain proportionate in order not to give a competitive advantage. The case concerns various measures introduced between 2002 and 2011 concerning in particular six disasters between 1990 and 2009. Most of the measures did not require companies to demonstrate that they had suffered any damage and to establish the amount of this damage, allowing companies that were registered but not physically present or economically active in the respective areas to receive aid. As all but one of the disasters at issue occurred more than ten years ago, which exceeds the Italian legal record-keeping obligation, recovery of the state aid is only claimed for the 2009 earthquake of L'Aquila and from companies that had no economic activity in the areas affected by the other disasters. Recovery is not required if the amount received by a company is too low to distort competition.Other Italian compensation schemes during that time had been duly notified and approved and are thus not affected by the Commission´s recent decision.

READ MORE *(click to open):*

- Press release: **EN** (DE, FR, IT available)
- Text of the two decisions, 14 August:
  Case 33083: **EN**, **IT**
  Case 35083: **EN**, **IT**

CJEU decides on retroactivity in the application of compound interest on a state aid recovery claim

On 3 September 2015, the CJEU delivered its judgment in the Italian preliminary ruling case A2A, C-89/14, concerning the application of compound interest on a state aid recovery claim relating to aids granted before EU law provided that compound interest has to be charged on such claims.In 2002, the European Commission had decided that several Italian undertakings held mainly by public entities providing public services had received a tax advantage incompatible with EU state aid rules through exemptions from corporation tax and subsidised loans. Italy was ordered to claim back these advantages. At that time, there was no rule in EU law on whether compound interest had to be charged on state aid recovery claims. Such EU rule came into effect only in 2004. Italy only reclaimed the aid in 2009, charging interest and compound interest on the amounts. The CJEU had to decide whether the charging of compound interest was retroactive application of the law in contradiction to the principles of EU law, which the CJEU denied, arguing that there was no retroactivity as the recovery claim was only made when the EU and national provision allowing for the charging of compound interest had long been in force.

READ MORE *(click to open):*

- Press release: **EN**, **ES**, **DE**, **FR**, **IT**, **PT**
- Judgment: **EN**
- Opinion of Advocate-General Wathelet: **EN** (all EU languages)

PROCEDURAL LAW

Voluntary disclosure: OECD updates its report

On 7 August 2015, the OECD has presented the update to its 2010 report on voluntary offshore disclosure programmes. This second edition contains practical experience from 47 countries in relation to their voluntary disclosure programmes.The OECD expects that the approaching entering into force of the automatic exchange of information according to the Common Reporting Standard (see article in this Report) in 2017 and 2018 (September 2017 in the EU) will trigger a large number of disclosures, as the remaining time may be seen by non-compliant taxpayers as the last window of opportunity.The OECD remains supportive of voluntary disclosure programmes. The CFE has contributed to the public consultation on this matter in 2014, underlining the importance of privilege of tax advisers. The OECD has included CFE´s comment that privilege must not be undermined by reporting obligations for other purposes, especially for anti money laundering.

READ MORE *(click to open):*

- Full report, 7 August 2015: **EN**
- Press release, 7 August 2015: **EN**
- CFE Opinion Statement PAC 2 and FC 13/2014 of September 2014: **EN** (CZ available)

CJEU: Italian statute of limitation for serious VAT fraud violates EU law

On 8 September 2015, the CJEU decided in the Italian preliminary ruling case Taricco, C-105/14, that a too brief limitation period for serious VAT fraud cases prevents effective and dissuasive penalties which affects the EU´s financial interests. In such a case, the Italian court may be obliged not to apply the limitation system in question.The case concerned criminal proceedings brought in Italy against persons charged with having formed and organised a criminal conspiracy in which they put in place fraudulent 'VAT carousel' arrangements. Through the use of shell companies and false documents, they are alleged to have acquired bottles of champagne VAT free, allowing a company to procure those bottles below the market price while deducting the VAT allegedly paid to the shell companies.Some of the charges are already time-barred, whereas the other charges will be time-barred before a final judgment can be delivered, due to the complexity of the investigation and the duration of the procedure. Italian law allowed an extension of the limitation period by only a quarter of its duration, resulting in individuals suspected of committing large-scale VAT evasion enjoying de facto impunity as a result of the expiration of the limitation period. In its judgment, the CJEU has pointed out that member states must counter illegal activities affecting the financial interests of the EU through effective deterrent measures, to the same extent as they counter tax fraud affecting their own budgets. As the EU budget is partly financed by member states´ contributions calculated from their VAT assessment basis, the CJEU saw a direct link between the collection of that revenue and the financial interests of the EU. It appears that Italian law does not provide for the same statute of limitation as concerns some taxes that create revenue only for Italy´s state budget. The obligation to give EU law full effect may oblige judges to disapply conflicting national laws.The decision may also have an impact on the Council negotiations on the proposed Directive on fight against fraud to the EU´s financial interests by means of criminal law. To date, the majority of member states has been in favour of excluding VAT fraud from its scope.

READ MORE *(click to open):*

- Press release: **EN**, **ES**, **CZ**, **DE**, **FR**, **IT**, **PL**, **PT**, **RO**, **SK**, **SI**
- Judgment and Opinion of Advocate-General Kokott: **All EU languages**

TAX TRANSPARENCY

CFE comments on further corporate tax transparency, doubting usefulness of public country by country information

Responding to the European Commission´s public consultation on further corporate tax transparency in which the Commission consulted on several options

for corporate tax reporting (see **CFE European Tax & Professional Law Report June/July 2015**), the CFE has questioned the usefulness of country by country tax information being public and rejected the idea of using such information to apply public pressure on companies to pay more tax than legally owed. Instead, country by country reporting should follow the OECD format which provides for a template to be reported to tax authorities and exchanged among these.On the question on whether taxpayers or advisers should be obliged to disclose certain tax planning arrangement, the CFE stresses that if introduced, such requirements must respect the taxpayer´s right to privacy and effective legal protection and the right against self-incrimination.

READ MORE *(click to open):*

- CFE Opinion Statement PAC 2 and FC 12/2015: **EN**
- Overview on all public responses: **EN**

Another (more moderate) EP draft report on tax transparency and anti avoidance policy

On 4 September 2015, the European Parliament´s ECON Committee presented the draft initiative report by MEPs Anneliese Dodds (Social Democrats, UK) and Luděk Niedermayer (EPP, Czech Republic) containing recommendations to the European Commission "on bringing transparency, coordination and convergence to Corporate Tax policies in the Union". The draft report demands the Commission to come up with one or several proposals introducing an EU common corporate tax base (CCTB) and adding a consolidation element in a second step (CCCTB). This proposal should contain rules to prevent corporate base erosion and profit shifting (BEPS) such as provisions on hybrid mismatches, an EU-GAAR (general anti avoidance rule), a definition of permanent establishment and rules on the taxation of profits transferred to CFCs (controlled foreign companies) in low- or no-tax countries.The draft also asks for coordinated EU action against tax havens, the publication of all (cross-border and domestic) tax rulings in anonymised form, the development of guidance on tax-related state aid, EU transfer pricing guidelines embedding the OECD principles in the EU law context, and a proposal for a voluntary "fair tax payer" label. The draft report´s broad scope results in overlaps in content with other recent EP decisions or drafts on tax policy, namely the resolution on CBCR of 8 July, the draft ECON report on tax rulings on 14 July and draft TAXE report of 20 July 2015.Different from the resolution of 8 July, the new draft is not clearly in favour of introducing publication of CBCR tax information for all large EU companies. The draft also relies on new studies quantifying the significance of CIT and the revenue loss due to profit shifting in a more precise way than previous studies cited by the EP and the Commission.It also contains criticism of unilateral anti-BEPS measures such as the UK´s diverted profits tax. However, it does not support a new instrument for binding dispute resolution.The report itself is not legally binding. If adopted, it would however indicate to the Commission which measures Parliament would be willing to support. While in taxation, the EP only has consultative powers, its approval is required for introducing CBCR in corporate reporting

READ MORE *(click to open):*

- Procedural file (oeil – EP legislative observatory): **EN**
- Draft report, 4 September 2015: **EN**

OTHER EU POLICY

Commission launches new initiative on Capital Markets Union / CCTB proposal in Q4/2016?

On 30 September 2015, the European Commission presented an Action Plan on Building a Capital Markets Union, announcing a series of partly tax-related measures until 2018. As the Commission explains, the EU single market for alternative sources of finance other than bank financing for businesses, in particular for start-ups and smaller businesses, is under-developed compared to other major economies. This is due to various restrictions, including different tax incentives for venture capital and business angels and tax discrimination for foreign investment funds. These include burdensome withholding tax refund procedures. Apart from providing more diversified sources of cross-border financing and reducing dependence from banks, the Commission expects improved regulatory conditions for equity financing to reduce businesses` indebtedness. The Communication also mentions the new CCCTB proposal which should address corporate debt bias and has been scheduled for the last quarter of 2016. For 2017, the Commission has announced a code of conduct for member states on withholding tax relief principles, to promote systems of relief-at-source and to establish quick and standardised refund procedures.For the same year, the Commission has planned a study on

discriminatory tax obstacles to cross-border investment by life insurance companies and by pension funds and possible infringement procedures in this area.The Commission has also started three public consultations, (1) on venture capital funds, (2) on covered bonds and (3) a call for evidence on the cumulative impact of financial legislation to prevent overlaps and inconsistencies between various sources of regulation.The Commission also adopted legislative proposals on securitisation and an amendment to the Solvency II Delegated Act.

READ MORE *(click to open):*

- Press release : **EN** (all EU languages)
- Capital Markets Union, new dedicated website : **EN** (DE, FR available)
- Action Plan: Communication COM(2015)468 of 30 September 2015: **EN**, **DE**, **FR**
- Staff working paper: Economic analysis accompanying the Action Plan: **EN**
- FAQs: **EN** (FR available)

3 public consultations (deadline 6 January 2016):

- Review of the European Venture Capital Funds and European Social Entrepreneurship Funds regulations : **EN** (dedicated website also available in DE, FR)
- Covered bonds in the European Union: **EN** (dedicated website also available in DE, FR)
- Call for evidence: EU regulatory framework for financial services: **EN** (dedicated website also available in DE, FR)

CROSS-BORDER TAX ADVICE

Advocate-General on proportionality of German qualification and registration requirements for tax advisers

On 1 October 2015, EU Court of Justice (CJEU) Advocate-General Cruz Villalón issued his opinion on the German preliminary ruling case X-Steuerberatungsgesellschaft, C-342/14, concerning a tax adviser company established in several other EU member states which provided tax advice to a German client and was refused by a German tax authority when trying to file tax returns, as it is not registered in Germany and is not held and managed by tax advisers, which is a regulated profession requiring a minimum qualification in Germany. As it appears, the services were provided solely through correspondence, without entering German territory.The Advocate-General concludes that in cases where neither the EU Professional Qualifications Directive nor the EU Services Directive applies, member states may require a certain level of qualification but must take account the knowledge and skills of the professional. The actual provision of German law is considered disproportionate as it is not fully suitable to attain its objective, as it allows other organisations and persons to practice tax advisory activities without having to demonstrate knowledge of German tax law.The CJEU is not bound by the Advocate-General´s opinion. It should also be noted that the facts of the case were not fully clear and there are circumstances suggesting that there may not have been a genuine cross-border situation.

READ MORE *(click to open):*

- Opinion: **DE** (most EU languages, not EN)

PROFESSIONAL LAW

CFE comments on MEPs´ demand for conflict of interest rules for tax advisers at EU level

On 18 August 2015, the CFE has commented on the draft report of MEPs Elisa Ferreira (Social Democrats, Portugal) and Michael Theurer (Liberals, Germany) from the European Parliament´s Special TAXE Committee (see **CFE European Tax & Professional Law Report June/July 2015**). The extensive draft is a tour d´horizon on a wide range tax policy topics currently discussed.The rapporteurs are concerned about possible conflicts of interest where tax firms advise both the government and private clients and calls for the development of an EU incompatibility regime and invited the Commission to consider sanctions on firms which engage in aggressive tax planning by refusing them EU funding and advisory roles in EU institutions.The CFE has clarified that these situations normally do not generate a conflict of interest, because tax advisers can advise both governments and private clients on existing opportunities for tax planning; the completion of the assignment for one client does not compromise the other. Moreover, conflict of interest rules already exist by national professional bodies, which the draft report fails to recognise. The CFE argues that governments and European institutions should not be restricted in their choice of the most qualified tax experts.The CFE also maintains that there should not be sanctions against tax advisers imposed on the basis of suspicion based on non-compliance with behavioural criteria not properly defined.On 24 September, the TAXE published more than 1000 suggestions for amendment to

the report from its members. The TAXE vote is scheduled for 26 October, and the vote of the EP plenary for 24 November 2015.

READ MORE *(click to open):*

- Draft report: **All EU languages**
- Proposed amendments to the draft report, 24 September 2015:Amendments 1-167: **EN**
  Amendments 167- 454: **EN**
  Amendments 455- 794: **EN**
  Amendments 795- 1047: **EN**
- CFE statement available on **request**

CFE NEWS

New Italian organisation joins CFE

On 18 September 2015, the Italian professional organisation „Consiglio Nazionale dei Dottori Commercialisti e degli Esperti Contabili" (CNDCEC) joined the CFE as its 27th member organisation. CNDCEC has around 116,000 individual members, most of which practice in tax. While the profession of tax adviser is not regulated by law in Italy, the profession of accountant (Dottore Commercialista) is

READ MORE *(click to open):*

- Press release: **EN**

CFE National Reports on recent changes in tax laws and professional affairs

The CFE has published the National Reports of its Fiscal Committee and its Professional Affairs Committee. The Reports summarise recent changes in national tax laws (March – September 2015) and developments in tax advisers´ professional affairs (September 2014 – September 2015)

READ MORE *(click to open):*

- Professional Affairs: **EN**
- Tax: **EN**

IMPRESSUM

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