



CFE EVENTS

Save the date: CFE Forum on 21 April 2016: Rebuilding international taxation: How to square the circle?

The next CFE Forum, CFE's international tax conference, will take place in Brussels on 21 April 2016. The Forum will deal with the current redesign of concepts of international taxation. Subjects will include the EU's and member states' response to the OECD's BEPS outcomes, in particular expected changes to the concepts of economic substance, value creation and permanent/fixed establishment and the upcoming C(C)CTB proposal. The conference will also ask how legal certainty and tax confidentiality will be affected by the recent changes to tax information exchange, in particular on rulings. Speakers will provide both a direct tax and a VAT perspective.

READ MORE *(click to open)*:

- More information will soon be available on the CFE Website: [EN](#)

READ MORE *(click to open)*:

- Press release, 16 November 2015: [EN](#) (FR available)
- Common reporting standard, country by country overview: [EN](#)

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

On 6 October 2015, the EU Ecofin Council agreed an amendment 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. See our detailed report in [CFE European Tax & Professional Law Report August/September 2015](#).

Commission consults on C(C)CTB re-launch

On 9 October 2015, the European Commission opened a public consultation on the re-launch of the CC(C)TB. In its Corporate Taxation Action Plan of 17 June 2015, the Commission announced its intention to propose, as a first step, a mandatory corporate tax base without consolidation (CCTB), but with a mechanism that would allow for temporary cross-border loss offset. However, the questions in the consultation document suggest that the Commission might be less ambitious by proposing a Directive merely aimed at fighting BEPS at EU level, even before the CCTB proposal.

Next to a number of possible anti-avoidance instruments, the consultation paper mentions the possibility of allowing companies that do not automatically qualify for a C(C)CTB to opt for it. Further issues relate to the treatment of debt, i.e. how a bias of debt over equity financing could be prevented and how research and development can best be incentivised. The consultation is open until 8 January 2016.

DIRECT TAX

G20 leaders endorse final BEPS Recommendations

On 16 November 2015, the G20 heads of state, at their meeting in Antalya, endorsed the OECD final Recommendations to counter BEPS (base erosion and profit shifting). The measures have been presented to the public on 5 October (see [CFE European Tax & Professional Law Report August/September 2015](#)).

The OECD have published on their website an overview of the steps taken and choices made by each participating jurisdiction in the context of implementing the "Common Reporting Standard" on bank account information. The overview includes links to relevant documents, e.g. new legislation published in official journals. G20 countries committed to introducing the Standard by 2018 at the latest.

READ MORE (click to open):

- Consultation document: [EN](#)
- Dedicated website: [EN](#) (DE, FR available)

CJEU dismisses Austrian discrimination on goodwill depreciation

On 6 October 2015, the EU Court of Justice (CJEU) rendered its judgment in the Austrian preliminary ruling case C-66/14, IFN, on group taxation. The Court held that a provision of law which allows a parent company, in the case of the acquisition of a holding in a resident company which becomes a member of such a group, to depreciate the goodwill up to a maximum of 50% of the purchase price of the holding, while such depreciation is prohibited if a holding in a non-resident company is acquired, violates the EU freedom of establishment.

READ MORE (click to open):

- Judgment: [EN](#) (all EU languages)
- Opinion of Advocate-General Kokott : [DE](#) (most EU languages, not EN)

Commission asks Poland to stop discriminatory tax treatment of pensions contributions

On 22 October 2015, the European Commission has asked Poland to change its tax laws which grant tax deductibility of private pension contributions only if these are paid into "Individual Pension Insurance Accounts" (IKZE) opened in Polish financial institutions, but not into similar financial products and institutions established in other EU/EEA states. The Commission's request takes the form of a reasoned opinion. In the absence of a satisfactory response within two months, the Commission may refer Poland to the CJEU.

READ MORE (click to open):

- October 2015 infringement package: [EN](#) (14 EU languages available)

Commission asks the Netherlands to amend LOB clause in double tax treaty with Japan

On 19 November 2015, the European Commission asked the Netherlands to amend the Limitation on Benefits (LOB) clause in the Dutch-Japanese Tax Treaty for the Avoidance of Double Taxation which entered into force on 1 January 2012. The Commission believes that, on the basis of previous cases such as C-55/00 *Gottardo* and C-466/98 *Open Skies*, a member state concluding a treaty with a non-EU/EEA country cannot agree a better treatment of companies held by shareholders resident in its own territory than for comparable companies held by shareholders resident elsewhere in the EU/EEA. Similarly, it cannot agree better conditions for companies traded on its own stock exchange than for companies traded on stock exchanges elsewhere in the EU/EEA. Under the current terms of the LOB clause, some of the latter entities suffer higher withholding taxes on dividends, interest and royalties received from Japan than similar companies with Dutch shareholders or whose shares are listed and traded on recognised stock exchanges, which include certain EU and even third-country stock exchanges. The Commission's request takes the form of a reasoned opinion. The Netherlands have two months time to respond to the Commission's request.

READ MORE (click to open):

- Press release : November infringement package: [EN](#) (all EU languages)

Commission asks Spain to end discrimination of foreign non-profit entities and their contributors

On 19 November 2015, the European Commission asked Spain to amend its rules on the taxation of certain income obtained by foreign non-profit entities and of certain contributions to such entities. Currently, Spanish non-profit entities can benefit from certain tax exemptions: Taxpayers who contribute financially to those entities have access to several tax incentives in respect of their contributions. However, this does not apply to foreign non-profit entities that derive comparable income from Spain, but which are established in another EU/EEA state without a branch in Spain.

The Commission considers this to be discriminatory and a restriction of the free movement of capital and has asked Spain to amend its rules. The request takes the form of a reasoned opinion, leaving the country two months to provide the Commission with a satisfactory response.

READ MORE (click to open):

- Press release : November infringement package: [EN](#) (all EU languages)

Germany asked to amend inheritance tax rules on allowances for widow(er)s living abroad

On 19 November 2015, the European Commission asked Germany to amend its inheritance tax rules permitting German tax authorities to grant a special maintenance allowance to surviving spouses or registered partners of a deceased individual only if either one or both of them are tax residents in Germany. Surviving spouses or registered partners who inherit an estate or an investment located in Germany are not entitled to such allowance if both the deceased and the heir are tax resident in another EU member state. The Commission considers this to be an unjustified restriction on the free movement of capital which may deter other EU nationals from investing their capital in German properties and investments. The Commission's request takes the form of a reasoned opinion. Germany now has two months to respond to the Commission.

READ MORE (click to open):

- Press release : November infringement package: [EN](#) (all EU languages)

Briefing papers on tax rulings, IP box regimes and tax good governance topics

On 16 October 2015, the European Parliament's policy department has provided briefing papers to support the work of the TAXE Special Committee. The papers concern:

- Intellectual property "box" regimes, including a survey of all 12 European IP box regimes in existence by the end of 2014, an evaluation of these regimes on the basis of the EU state aid rules and the EU Code of Conduct for business taxation, and a discussion of options to reform the taxation of IP income in order to counter profit shifting and tax base erosion;
- EU state aid law and tax rulings, in particular the notion of selectivity;
- Different mechanisms for exchange of information between tax administrations;

- An overview on existing advance tax rulings systems, advance pricing agreements and other tax arrangements and how these could develop in the future;
- Tax planning techniques applied by multinationals leading to large differences in their nominal and effective corporate tax rates; and
- Selected issues EU countries may face when promoting tax good governance in non-EU countries.

READ MORE (click to open):

- Supporting analyses (links to all six papers): [EN](#)

OECD publishes 9th edition of Model Tax Convention with Commentaries

On 30 October 2015, the OECD published the 9th edition of the full (2014) version of the OECD Model Tax Convention on Income and Capital, including the Commentaries, non-member economies positions, OECD Council recommendation, historical notes and a detailed list of conventions between OECD countries and background reports.

READ MORE (click to open):

- Press release: [EN](#)
- Full version (read-only): [EN](#)
- 2014 Model Tax Convention (articles only): [EN](#)

Ireland to introduce "knowledge development box"

On 13 October 2015, Ireland announced the planned introduction a reduced corporation tax rate of 6.25% on profits arising from research and development projects relating to certain patents and copyrighted software carried out by an Irish company. While details of the planned tax measure are not yet public, the Irish government aims at proposing an incentive fully compliant with the "modified nexus approach" supported by the EU and the OECD designed to prevent multinationals from shifting their intellectual property to those jurisdictions that give them the most favourable tax treatment, irrespective of any link between that jurisdiction and the generation of the IP rights and their value. Several tax firms that have commented on the measure expect that in most sectors, it will serve indigenous companies more than multina-

tionals. The law is expected to apply to accounting periods beginning on or after 1 January 2016.

Patent boxes: Consultation on implementing the nexus approach in the UK

From 22 October to 4 December 2015, the UK tax administration held a public consultation “Patent Box: substantial activities” on how to bring the existing UK patent box regime in conformity with Action 5 of the OECD BEPS Action Plan and the “modified nexus” approach. The UK government plans to publish draft legislation in December taking into account the results of the consultation process.

READ MORE *(click to open)*:

- ICAEW article: [EN](#)
- Consultation document: [EN](#)

Updated report on national rules for the use of mini one-stop shop

On 29 October 2015, the European Commission has updated the Overview and the Report on EU member states’ rules for the use of the mini one-stop shop for electronic, telecom and broadcasting services.

The document contains detailed provisions for a variety of sectors, forms of application of relevant EU Directives, as well as any other provisions and rules specific to the given Member State.

READ MORE *(click to open)*:

- Updated Report: [EN](#) (Download Excel sheet)
- Updated overview: [EN](#)
- Dedicated website: [EN](#) (DE, FR available)

CJEU rules on deduction of input VAT for public path leading to a place where taxable goods and services are sold

On 22 October 2015, the CJEU decided in the Lithuanian preliminary ruling case C-126/14, Sveda, that a taxable person has the right to deduct the input VAT paid for materials used for building a recreational path accessible for the public free of charge, if that person intends to attract these visitors to a place where he tries to sell them VAT-taxable goods and services, and this is directly and immediately related to his economic activity.

READ MORE *(click to open)*:

- Judgment: [EN](#) (all EU languages)
- Opinion of Advocate-General Kokott : [EN](#)

INDIRECT TAX

CJEU rules on right to deduct VAT in case of missing supplier

On 22 October 2015, the CJEU rendered its judgment in case C-277/14, PPUH Stehcemp, referred to it by the Polish Supreme Administrative Court. The EU Court held that national law may not refuse the deduction of the VAT due or paid in respect of goods delivered, on the grounds that the invoice was issued by a trader which is to be regarded as non-existent, and that it is impossible to determine the identity of the actual supplier of the goods. This does not apply where it is established on the basis of objective factors that that taxable person knew, or should have known, that the transaction was connected with VAT fraud. When establishing this, the taxable person cannot be required to carry out checks which are not his responsibility.

READ MORE *(click to open)*:

- Judgment: [EN](#) (all EU languages)

CJEU: No VAT on exchange of currency into Bitcoins

On 22 October 2015, the CJEU decided in the Swedish preliminary ruling case C-264/14, Hedqvist, that no VAT is due on the exchange of a “traditional” currency into the digital currency (and vice versa). This means that Bitcoins should get the same VAT treatment as traditional currencies

READ MORE (click to open):

- Judgment: [EN](#) (all EU languages available)
- Press release : [ES](#), [CS](#), [DE](#), [EN](#), [FR](#), [IT](#), [NL](#), [PL](#), [PT](#), [SK](#), [SI](#), [FI](#)

READ MORE (click to open):

- Opinion: [FR](#) (several EU languages available, not EN)

OECD updates international VAT/GST Guidelines

On 6 November 2015, representatives of more than 100 countries present at the OECD Global Forum on VAT in Paris endorsed the updated OECD International VAT/GST Guidelines.

The OECD International VAT/GST Guidelines set standards on VAT-neutrality and on destination-based taxation of cross-border services to businesses (B2B) and final consumers (B2C). The changes include recommended rules for the collection of VAT on cross-border services, including internet downloads, to private consumers (B2C Guidelines). Foreign sellers should be obliged to register and remit tax on sales of e-books, apps, music, videos and other digital goods in the jurisdiction where the final consumer is located. The Guidelines also include a mechanism to ensure the effective collection of VAT by tax authorities from foreign sellers, helping governments to protect VAT revenues and levelling the playing field between domestic and foreign suppliers. The Guidelines are a response to governments' concerns over the rising volume of cross-border services and online downloads on which no VAT is paid. In 2014, B2C e-commerce sales were estimated to exceed € 1.3 trillion, an increase of nearly 20% from 2013.

READ MORE (click to open):

- Statement of Outcomes: [EN](#)
- Updated International VAT/GST Guidelines: [EN](#)

Commission updates VAT guidelines

On 19 October 2015, the European Commission updated its list of VAT Committee guidelines by including the guidance agreed at the Committee's 104th meeting of 4/5 June 2015, concerning intra-community transfer of goods and the definition of fixed establishment. The guidelines of the VAT Committee are not legally binding.

READ MORE (click to open):

- All VAT Committee guidelines since 1977: [EN](#)
- Index of guidelines (MS Excel file): [EN](#)

CJEU judgment on VAT classification of a company set up by a public body and its services rendered to that body

On 29 October 2015, the CJEU rendered its judgment in the Portuguese preliminary ruling case C-174/14, Sudaçor on the VAT treatment of a company set up and owned by the Azores Autonomous Region and rendering to that Region advisory services on health system matters. While the Court classified the services rendered as economic activity in the meaning of the VAT Directive, it asks the referring court to ascertain whether the company carries out that activity as a public authority. When defining 'other bodies governed by public law', reliance cannot be made on the concept of public bodies in the Directive for the award of public procurement contracts.

READ MORE (click to open):

- Judgment: [EN](#) (All EU languages)

Advocate-General delivers opinion on VAT "self-supply" charge

On 15 October 2015, CJEU Advocate-General Mengozzi issued his opinion on the Dutch preliminary ruling VAT case C-128/14, Het Oudeland Beheer. The case concerns the calculation of a "self-supply" charge applying when a building is taken into use, to make a mixture of taxable and exempt supplies. Unlike the Dutch Revenue, the Advocate-General considers that the future rental payments due over the term of the lease should be included in this charge.

Commission publishes explanatory notes on place of supply for services connected with immovable property

On 29 October 2015, the European Commission has published explanatory notes on VAT place of supply rules on services connected with immovable property that enter into force in 2017, to facilitate compliance. The notes express the Commission's views and are not legally binding on member states.

READ MORE *(click to open)*:

- Explanatory notes: [EN](#)

Slovenian small businesses VAT exemption extended

On 10 November 2015, the EU Ecofin Council adopted a decision authorising Slovenia to extend by three more years (i.e. until until 31 December 2018) a measure exempting small businesses with a turnover no higher than € 50,000 from VAT.

READ MORE *(click to open)*:

- Council implementing decision: [EN](#)

OTHER TAX POLICY

Commission presents 2016 work programme / standard VAT declaration to be abandoned

On 27 October 2015, the European Commission presented its work programme for 2016.

The text announces "a set of measures to enhance transparency of the corporate tax system and fight tax avoidance, including by implementing international standards on base erosion and profit-shifting", but contains no clear statement on whether companies should publish country by country tax information. The CCCTB proposal will be replaced by a new (CCTB) proposal mainly aimed at a mandatory tax base.

The Commission will also present an action plan on VAT with initiatives on VAT rates and e-commerce and a Communication setting out a definitive VAT regime. It intends to withdraw a number of VAT proposals, including the standard VAT declaration, where Council discussions have resulted in a compromise

that "has fully denatured the substance of the Commission proposal" and has "run counter to simplification, harmonisation and burden reduction objectives" of the original proposal.

READ MORE *(click to open)*:

- Work Programme (COM(2015)610): [EN/DE/FR](#)
- Dedicated website (links to background documents) : [EN](#)

TAXE Committee adopts final report / possible follow-up Committee

On 25 November 2015, the European Parliament's plenary adopted the TAXE Special Committee's "Report on tax rulings and other measures similar in nature or effect". The report concludes the original work of the TAXE Committee set up in February 2015.

The lengthy report addresses a wide range of tax policy issues and tries to accommodate a wide spectrum of different views: Criticising tax advisers and other professionals for designing and implementing tax avoidance schemes, it also stresses the ambivalent position of some member states complaining about base erosion while preventing better coordination of tax systems. The report remarks that all tax planning should be within the boundaries of the law and applicable treaties and that the best response to aggressive tax planning is good legislation and international coordination.

Tax rulings are recognised as a useful tool for providing legal certainty and reducing risk; recourse to legitimate tax rulings should thus not be discouraged. The MEPs deplore the compromise on exchange of tax rulings information reached in the EU Council on 6 October, which falls short of main elements of the Commission's original proposal, such as the submission of the exchanged information to the Commission, let alone further demands by the EP: MEPs had suggested to extend the exchange to domestic rulings, with no limits to retroactivity, thus including all rulings which are still valid. Governments granting illegal state aid should be sanctioned; as MEPs point out, the obligation of recipients to pay back benefits granted illegally might even be considered a reward of member states for having taken an illegal decision. The report encourages the EU to go further than the BEPS solutions in coordination and convergence and the avoidance of harmful tax competition. It also expresses its support for mandatory publication of country-by-country tax information which should also contain information on tax rulings. As to transfer pricing, the report identifies the lack of guidance and comparable transactions as the main difficulties in the application of the arm's length principle and points at the lack of an effective dispute resolution

mechanism.

The Parliament favours a mandatory CCCTB, acknowledging the introduction of firstly a CCTB, including a interim regime for temporary cross-border loss offset, as envisaged by the Commission.

On tax advisers, the report identifies a conflict of interest for tax firms that advise both private clients and governments on tax planning opportunities, and asks the European Commission to propose a code of conduct at EU level to prevent such conflicts of interest. The report is also critical towards the presence of Big Four representatives in European Commission advisory groups like the Platform for Tax Good Governance and the Joint Transfer Pricing Forum. The CFE commented on the tax adviser related aspects in the draft report in August 2015.

On 16 November, a group of multinationals had been questioned by the TAXE members about their international tax strategies: Google, Facebook, Amazon, HSBC Bank, Barclays, Philip Morris, IKEA, Coca-Cola, Walt Disney, McDonald's and Anheuser-Busch InBev followed the Committee's invitation. Questions were not limited to tax rulings but also concerned transfer pricing practices more generally, the OECD BEPS Recommendations, mandatory public country-by-country reporting on profits, taxes and subsidies, a CCCTB and activities in jurisdictions like Bermuda and the Cayman Islands.

The companies had declined a previous invitation to appear before the TAXE Committee, sparking controversy about possibilities to bar them from the EU Transparency (lobby) Register and exclude them from the possibility to meet with MEPs.

On 26 November 2015, the EP's Conference of Presidents of political groups decided to set up a temporary committee to follow up on the work done by the TAXE Special Committee, as MEPs feel that they need more time to access and analyse documents and monitor legislative initiatives. The new committee will last six months. Its precise mandate will be decided on 2 December, while the group leaders have suggested that both scope and composition should be the same as for the TAXE Committee.

READ MORE (click to open):

- Resolution adopted, 25.11.2015: [EN](#) (all EU languages)
- Press release on the TAXE report, 25.11.2015: [EN](#) (all EU languages)
- Press release : Extension of mandate, 26.11.2015: [EN](#)
- Press release, interviews of multinationals, 16.11.2016: [EN](#) (FR available)
- Video recording, extracts from the hearing, Panel I (Google, Facebook, Amazon, HSBC Bank and Barclays), 16.11.2016: [All EU languages](#)

- Panel II (Philip Morris International, IKEA, Coca-Cola, The Walt Disney Company, McDonald's and Anheuser-Busch InBev), 16.11.2016:

[All EU languages](#)

UN Tax Committee meets in Geneva

The United Nations Tax Committee ("Committee of Experts on International Cooperation in tax matters") met from 19 to 23 October 2015 in Geneva. The Committee decided to add an article to the UN Model Convention stating that technical services can be taxed in the country where they arise, not where they are performed. This change is favoured by developing countries but has met reservations by developed countries.

The Committee also proposed a "Code of Conduct on Cooperation in Combating International Tax Evasion", to be adopted by the UN ECOSOC (Economic and Social Council). Technical issues discussed include hybrid financial instruments, permanent establishments and connected projects, royalties and taxation of the extractive industries. A move towards upgrading the Tax Committee to a UN International Organisation, strongly supported by a group of 77 developing countries and China, had been rejected by developed countries in July 2015 (see [CFE Tax & Professional Law Report June/July 2015](#)). The meetings were attended by Ian Young, chairman of the CFE Direct Tax Sub-Committee. The CFE has observer status with the ECOSOC.

READ MORE (click to open):

- Updated agenda (containing further links): [EN](#)
- Meeting papers: [EN](#)
- UN Handbook on Selected Issues in Protecting the Tax Base of Developing Countries: [EN](#)
- UN Handbook on Selected Issues in Administration of Double Tax Treaties: [EN](#)
- Practical Manual on Transfer Pricing for Developing Countries: [EN](#)
- Practical Manual on Negotiation of Double Tax Treaties between Developed and Developing Countries: [EN](#)
- Progress report on capacity building: [EN](#)
- Papers related to extractive industries taxation (EN):
 - Capital gains tax and indirect transfers: [EN](#)
 - Selected treaty issues: [EN](#)
 - Tax treatment of decommissioning costs: [EN](#)
 - Value Added Tax: [EN](#)

ADMINISTRATIVE COOPERATION AND FIGHT AGAINST TAX FRAUD

Commission updates overview of member states' tax havens lists

On 12 October 2015, the European Commission published an update of its list of third country jurisdictions that have been identified by EU member states for tax purposes. The update reflects changes in EU member states' assessments of third countries' tax good governance standards, corrections to national lists and Estonia's decision to withdraw all countries from its national list.

While the Commission's ultimate goal, to develop a common EU approach to third countries in the promotion tax transparency, good governance and possibly effective taxation standards, is not yet within reach, the Commission is hoping that the list will encourage member states to update their lists more regularly. Annual updates of member states' lists are planned. Unlike the list published by the Commission on 17 June 2015, the new list avoids giving the impression of an EU list and specific mention of the most-listed countries.

The previous list had been criticised for containing outdated information, and for not taking into account the transparency criteria monitored by the OECD Global Forum. The CFE has contributed to the update process in the Commission's multi-stakeholder Platform for Tax Good Governance.

READ MORE *(click to open)*:

- Press release : [EN](#)
- Overview on EU countries' national lists : [EN](#)

EU finalises new tax transparency agreements with Liechtenstein and Andorra

On 28 October 2015, the European Union and Liechtenstein signed an agreement on the automatic exchange of financial account information. Under the agreement, the EU member states and Liechtenstein will automatically exchange information on the financial accounts of each other's residents, starting in 2017 for information collected in 2016.

On 4 November 2015, the EU and Andorra initialled the text of a similar agreement under which Andorra and EU member states will start exchanging information as of 2018. This agreement should be formally signed in early 2016, following authorisation by the EU Council and the Andorran government. Similar agreement have been signed in May 2015 with Switzer-

land and initialled with San Marino. Negotiations are currently being finalised with Monaco.

All of these agreements are in line with the OECD/G20 standard for automatic exchange of information ("Common Reporting Standard").

READ MORE *(click to open)*:

- Press release: Liechtenstein agreement: [EN](#)
- Text of the Liechtenstein agreement: [EN](#)
- Press release : Andorra agreement : [EN](#)
- OECD Common Reporting Standard: [EN](#)

Savings Tax Directive repealed

On 11 November 2015, the EU Council repealed the EU Savings Tax Directive to avoid an overlap with the EU Administrative Cooperation Directive, which, since the inclusion of the OECD/G20 standard on automatic exchange of bank account information in December 2014, also covers the taxation of private savings income that was previously dealt with by the Savings Tax Directive. The provisions on automatic exchange will be effective as of 2016. Transitional measures apply for Austria which has been allowed to introduce automatic exchange of information one year later.

READ MORE *(click to open)*:

- EU Council press release: [EN](#)
- Text adopted: [EN](#)
- Consolidated version of EU Administrative Cooperation Directive: [EN](#)

STATE AID

Commission: Dutch and Luxembourg tax rulings Starbucks and Fiat were illegal / names of further multinationals possibly under scrutiny

On 21 October 2015, the European Commission concluded that the tax rulings issued by the Dutch and Luxembourg tax administrations to Fiat Finance and Trade and Starbucks approved transfer prices not reflecting economic reality, endorsed artificial methods to establish the companies' profits and thereby gave them a selective advantage over competitors, incompatible with the EU state aid rules. Most of the profits of Starbucks' coffee roasting company have been shifted abroad, where they are also not taxed, and Fiat's financing company only paid taxes on underestimated profits.

Fiat Finance and Trade, based in Luxembourg, provides financial services, such as intra-group loans, to other Fiat group companies. The Commission concluded that a tax ruling issued by the Luxembourg authorities in 2012 unduly reduced the company's tax burden by €20 - €30 million since 2012. Given that Fiat Finance and Trade's activities are comparable to those of a bank, the Commission determined its taxable profits in a similar way as for a bank, as a calculation of return on capital deployed for its financing activities. The tax ruling endorses a methodology considered artificial and extremely complex, in two ways:

- Due to a number of economically unjustifiable assumptions and downward adjustments, the capital base approximated by the tax ruling is much lower than the company's actual capital. As a matter of principle, if the taxable profits are calculated based on capital, the level of capitalisation in the company has to be adequate compared to financial industry standards.
- The estimated remuneration applied to this already much lower capital for tax purposes is also much lower compared to market rates.

As a result, Fiat Finance and Trade has only paid taxes on a small portion of its actual accounting capital at a very low remuneration. According to market conditions, the taxable profits declared in Luxembourg would have been 20 times higher.

Starbucks Manufacturing EMEA BV („Starbucks Manufacturing“), based in the Netherlands, is the only coffee roasting company in the Starbucks group in Europe. It sells and distributes roasted coffee and coffee-related products (e.g. cups, packaged food, pastries) to Starbucks outlets in Europe, the Middle East and Africa. The Commission concludes that a tax ruling issued by the Dutch authorities in 2008 un-

duly reduced Starbucks Manufacturing's tax burden since 2008 by €20 - €30 million, by artificially lowering taxes paid by Starbucks Manufacturing in two ways:

- Starbucks Manufacturing pays a very substantial royalty to a UK-based group company which is neither liable to pay corporate tax in the UK, nor in the Netherlands, for coffee-roasting know-how.
- It also pays an inflated price for green coffee beans to a Swiss group company.

The Commission explains that other products than coffee roasting represents most of the turnover of Starbucks Manufacturing, and that its profits from coffee roasting resulting from the arrangements are not high enough to pay the royalty to the UK group company that holds the know-how.

The Commission ordered Luxembourg and the Netherlands to end this tax treatment and claim back the advantage granted to the two companies.

In the two investigations, the Commission has for the first time used new information request tools, enabling it, if the information provided by a member state subject to the state aid investigation is not sufficient, to ask any other member state as well as companies (including the company benefitting from the aid measure or its competitors) to provide directly to the Commission all market information necessary to complete the state aid assessment.

The Commission is continuing its inquiry into tax rulings practices in all EU member states, announced in December 2014. There are pending in-depth state aid investigations concerning other tax rulings issued by Belgium ("excess profits tax"), Ireland (Apple) and Luxembourg (Amazon).

On 3 November 2015, the Dutch newspaper Trouw reported that the Commission has further requested the Dutch government to provide information on tax rulings concerning Microsoft, Pfizer, GlaxoSmithKline and Kraft Foods and at least ten more companies. This however does not necessarily mean that there will be in-depth investigations. The reports are yet unconfirmed. The EU politics newspaper Politico reported on 2 December 2015 that the opening of a probe into a Luxembourg tax ruling concerning McDonalds could be imminent.

READ MORE (*click to open*):

- Press release: [EN](#)
- Non-confidential versions of the decisions (to be made available later)
- FIAT: [SA.38375](#)
- Starbucks: [SA.38374](#)
- Article in Trouw, 3.11.2015: [NL](#)
- Article in Politico, 2.12.2015: [EN](#)

State Aid: Commission approves French tax incentives to encourage investment in SMEs

On 5 November 2015, the European Commission decided that two schemes planned by France with the aim of facilitating investment in innovative SMEs are in line with the EU state aid rules:

(1) The wealth tax-SME scheme entails a reduction of 50 % up to a limit of € 18 000 p.a. in wealth tax for individual taxpayers who subscribe to the capital of innovative SMEs by way of mutual funds for innovation or local investment funds.

(2) The scheme for exceptional depreciation of investment by businesses in SMEs supplements the wealth tax-SME measure. It enables undertakings, whatever their size, to spread the depreciation of investments in SMEs over a period of five years. Both schemes, of a maximum duration of ten years, concern innovative SMEs which, at the time of the initial investment, have been active in their market for less than ten years following their first commercial sale. The Commission's examination showed the aid to be necessary to stimulate investment that would not be provided by the market unprompted, leading to a 'funding gap' for certain innovative SMEs. The lack of funding derives from the information asymmetry between investors and entrepreneurs, attributable to the relatively early stage of development and innovative nature of the undertakings concerned.

READ MORE (click to open):

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

PROCEDURAL LAW

International tax adviser bodies present Model Taxpayer Charter for greater fairness in taxation

On 13 November 2015, the CFE, together with two other international professional bodies of tax advisers, together representing more than 500,000 tax advisers worldwide, presented a proposal for a Model Taxpayer Charter.

The overriding purpose of the Charter is to foster a relationship of mutual trust, respect and responsibility between taxpayers and the state in order to reduce the cost of compliance, increase the quality and efficacy of willing compliance, and ensure that all taxpayers are treated equally. The aim is to strike a fair balance between rights and responsibilities to make the Charter acceptable and beneficial to both govern-

ments and taxpayers. The work comes with a Final Report concluding a research work which started in 2011.

The Model Taxpayer Charter was presented on the occasion of the CFE PAC Conference in Amsterdam themed "Big Data – a threat to taxpayer rights?".

READ MORE (click to open):

- Model Taxpayer Charter, Charter and Final Report: [EN](#)
- Press release: [EN](#) (DE, IT, NL versions available)
- PAC Conference: All presentations: [EN](#)

OECD: MAP workload increasing while resolution time remains unchanged

On 23 November 2015, the OECD released its updated statistics on mutual agreement procedures (MAPs) in the 2014 reporting period. The aggregate numbers show an increase by 19% of both new cases and pending cases during the past year. Since 2006, new and pending cases have more than doubled to now 2266 and 5423 cases, respectively.

Largest contributors of new cases are Germany, the US, Belgium and France. These four countries also have the highest number of pending cases.

The average cycle times for cases completed, closed or withdrawn remains almost unchanged at 24 months. More than 90% of OECD member countries' MAP inventories are cases with other OECD member countries. The statistics also list cases involving "partner economies", including China.

The lack of efficiency in MAPs was a reason for the OECD to propose new measures on dispute resolution as part of the BEPS project (BEPS Action 14). However, in its final Recommendations on BEPS published on 5 October 2015, the OECD did not manage to reach agreement on including mandatory and binding dispute resolution as a standard.

Around 20 countries have nevertheless committed themselves to set up a binding mechanism.

READ MORE (click to open):

- Press release: [EN](#) (FR available)
- Dedicated website : [EN](#) (FR available)
- BEPS 14 Final report : [EN](#)

CJEU: National court may be precluded from revising a final decision in civil proceedings that is contrary to EU law

On 6 October 2015, the CJEU decided in the Romanian preliminary ruling case C-69/14, *Târșia*, that it is not contrary to EU law that procedural rules for civil proceedings do not offer any opportunity to bring an action for revision of a final judicial decision for a breach of EU law. In the case at issue in which a Romanian vehicle owner claimed back his payment of a tax levied in violation of EU law, the CJEU decision was only issued after the date on which that national court decision became final. The CJEU noted that the situation may be different as regards final decisions in administrative proceedings.

READ MORE (click to open):

- Judgment: [EN](#) (All EU languages)

READ MORE (click to open):

- More information on the website of the Irish Tax Institute: [EN](#)
- Conference brochure: [EN](#)

CROSS-BORDER TAX ADVICE

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

On 1 October 2015, 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 services to a German client over the internet and was refused by a German tax authority when trying to file tax returns. For a more detailed report, please check [CFE European Tax & Professional Law Report August/September 2015](#).

READ MORE (click to open):

- Opinion: [DE](#) (most EU languages, not EN)

EVENTS

Global Tax Policy Conference in Dublin: “New rules for a new era” on 9 – 11 March 2016

The Irish Tax Institute, the Ash Center and the Harvard Kennedy School will jointly host a Global Tax Policy Conference in Dublin on 9 – 11 March 2016. The objective is to provide attendees with expert perspectives on the challenges to be addressed across the world of tax policy. Topics to be addressed at the conference will include:

- Global tax: what’s new from the OECD, EU, US, Asia & Australia
- The power of tax data – who owns it and who can use it?
- The US tax policy agenda
- Building tax infrastructure in developing and transitioning economies
- Global perspectives from Departments of the Treasury
- Transfer Pricing – new approaches and the transition
- The fiscal mix debate and sub-national challenges
- The impact of change on countries and companies.

New single market strategy: Commission keeps an eye on restrictions to tax advisory services like ownership rules or multi-disciplinary activities

On 28 October 2015, the European Commission published a Communication titled “Upgrading the Single Market: more opportunities for people and business”. Among other issues such as support of SMEs, the collaborative economy, insolvencies, discrimination of consumers, standardisation, public procurement, IP rights and simplified VAT rules for small e-businesses (already announced in May 2015 in its Digital Single Market Communication), the Commission addresses obstacles to access and exercise of regulated professions. For 2016, the Commission announced both soft law measures (guidance to member states on how to assess the proportionality of national requirements) but also legislative action in the form of a “services passport initiative” for “key business services” which include accountants. Under the “services passport” regime, cross-border service providers should be able to use harmonised notifi-

cation forms that contain all information that may be requested by the destination member state. Such proposal would also address legal form and shareholding requirements and restrictions to multidisciplinary activities. Restrictions to ownership of tax firms and multi-professional firms exist in at least 10 EU member states. The Communication also mentions insurance requirements for cross-border services as a possible target for measures. Such requirements exist for tax advisers in at least 9 EU countries.

READ MORE (click to open):

- Communication COM(2015)550, 28.10.2015: **EN** (DE, FR available)
- Press release : **EN** (All EU languages)

IMPRESSUM



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