E-News from the EU Tax Centre
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Latest CJEU, EFTA and ECHR

France – Commission v France (C-485/14)

On July 16, 2015 the CJEU rendered its decision in the Commission v France case (C-485/14) concerning the refusal of the French tax authorities to exempt gifts, donations and bequests to public bodies and charities from transfer tax, except when such bodies are established in France or a EU/EEA State having concluded a bilateral agreement of reciprocity with France. The court ruled that France had failed to fulfill its obligations under Article 63 TFEU and Article 40 of the Agreement on the European Economic Area, as the refusal to authorize a tax exemption is likely to discourage gifts and bequests to bodies that are not established in France or an EU/EEA State with a treaty of reciprocity, and the French Republic had not raised any overriding public interest that would justify the restriction.

Netherlands – Van Werelt (Case 784/14)

On June 15, 2015 the ECHR gave its decision in the case of Van Werelt in the application of the nemo tenetur principle (i.e. the right against self-incrimination and forced inculpation) with respect to tax penalties imposed for failure to provide requested information. The Dutch tax authorities requested information on an unreported bank account held by an individual in Switzerland on pain of a daily penalty of EUR 2,500 for failure to provide the requested information. The taxpayer appealed to the ECHR, arguing that an individual cannot be forced to actively cooperate in the collection of evidence against himself where substantial penalties had already been imposed in tax proceedings as this was incompatible with the nemo tenetur principle. The ECHR held that the taxpayer’s appeal was inadmissible as no final criminal charge had yet been imposed.
on the taxpayer and as such, the Court did not yet need to decide if the information request was compatible with Article 6 of the European Convention on Human Rights.

For more information, see Case 784/14.

Infringement procedures & Referrals to CJEU

Infringement procedures – Reasoned opinion

Belgium

On July 16, 2015 the European Commission requested, in the form of a reasoned opinion, that Belgium place its rules concerning tax benefits linked to the personal or family situation of taxpayers in conformity with European law. Where a taxpayer receives income originating in Belgium as well as from another Member State, the tax rate applied corresponds to the percentage of the total income that is accounted for by domestic income. An additional tax reduction is granted if the person or family situation of the taxpayer has not been taken into account by the tax authorities of other countries. This additional reduction is not granted if the taxpayer receives or is entitled to receive similar benefits in the other Member State. The Commission considers the Belgian rules may constitute an obstacle to the free movement of persons and capital.

For more information, see EC press release.

Infringement procedures - Closure

Spain

On July 23, 2015 the European Commission announced the closure of infringement procedures against Spain with regard to the discriminatory taxation of foreign dividends applied to investments in certain foreign bonds. The Commission closed infringement procedures after Spain had amended its legislation.

For more information, see EC press release.

State Aid
Commission opens two in-depth investigations into Hungary’s food chain inspection fees and tax on tobacco sales

On July 16, 2015 the European Commission issued injunctions prohibiting Hungary from applying the progressive rates of the food chain inspection fee and the tobacco tax until the Commission has concluded its assessment of whether the measures are in line with EU state aid rules. The injunction follows a complaint received by the Commission, which considers that the steeply progressive rates based on turnover selectively favor companies with a low turnover, giving them an unfair competitive advantage in breach of EU state aid rules.

For more information, see EC press release.

Commission orders France to recover EUR 1.37 billion in incompatible aid from EDF

On May 2, 2015 the European Commission decided that Électricité de France (EDF) was granted tax breaks incompatible with EU rules on State Aid. The Commission’s investigation confirmed that EDF received “an individual, unjustified tax exemption” when the French authorities reclassified accounting provisions as a capital injection without levying corporation tax. EDF must repay the sum of EUR 1.37 billion to the French State.

For more information, see TaxNewsFlash-Europe.

Norwegian R&D tax credit scheme evaluation plan approved by the European Free Trade Association (EFTA)

On June 24, 2015 the EFTA Surveillance Authority approved a plan submitted by the Norwegian tax authorities to evaluate the potential positive and negative effects of the “Skattefunn” aid scheme and to assess the potential impact on cross-border trade and competition with reference to State Aid rules.

For more information see EFTA press release.

EU Institutions

MEPs advocate country-by-country reporting to help developing countries

On July 8, 2015 MEPs voted in favor of a non-binding resolution calling for the European Commission to put forward an action plan to support developing countries in fighting tax evasion and tax avoidance and in setting up fair, well-balanced, efficient and transparent tax systems.
European Parliament approves amended Shareholders’ Rights Directive

MEPs called on the EU and member states to enforce the principle that multinational companies in all countries and sectors, and especially those extracting natural resources, must adopt country-by-country reporting as standard, requiring them to publish information on the names of all subsidiaries, financial performance, relevant tax information, assets and number of employees for each territory in which they operate in their annual reports. MEPs also called for increased share-based remuneration and the setting of clear criteria for awarding remuneration that contributes to the long-term interest of companies.

For more information, see the European Parliament Press Release.

European Parliament Special Committee on Tax Rulings (TAXE) draft report asks Commission to be more ambitious

On July 23, 2015 TAXE published a draft report on corporate taxation containing many recommendations, a number of which the European Commission is already considering. The report also went further than the Commission has to date promised. Among other measures, the report calls for legal protection for whistleblowers, money recovered in the event of illegal state aid to be given over to the states which suffered an erosion of the tax base, automatic exchange of information on all tax rulings and the establishment of a clear definition and common criteria to identify tax havens.

For more information, see the TAXE draft report.

European Parliament Committee on Economic and Monetary Affairs (ECON) issues draft report on the proposal for a Council directive amending Directive 2011/16/EU

On July 14, 2015 ECON issued its draft report with proposals to amend Directive 2011/16/EU (Mutual Assistance Directive). The proposals, if approved by the European Parliament, would extend automatic exchange of information beyond cross-border rulings to cover tax rulings more generally and would result in the maintenance of a secure central directory to hold information exchanged on tax rulings. The information therein would be accessible to the European Commission, which would publish an anonymized annual report summarizing the main cases.

For more information, see the ECON draft report.

Luxembourg presidency presents its work program

On July 14, 2015 the presidency pledged to ensure a swift implementation of the EU’s action plan on investment and to pursue
negotiations on a number of proposals dealing with financial services and also committed to fighting tax fraud and tax evasion.

For more information, see the Presidency webpage.

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**OECD**

**Public comments received on discussion draft on BEPS Action 8**

On June 4, 2015 the OECD invited interested parties to comment on Action 8 of the BEPS Action Plan concerning Cost Contribution Arrangements (CCAs) and subsequently published the comments received on June 19, 2015.

For more information, see CCA Discussion Draft and OECD public comments.

**Global Forum on Transparency and Exchange of Information for Tax Purposes - New compliance ratings**

On August 3, 2015 the Global Forum on Transparency and Exchange of Information for Tax Purposes issued new peer review reports regarding the exchange of information practices for 12 countries and jurisdictions including Poland and Lithuania.

For more information, see the OECD webpage.

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**Local Law and Regulations**

**Croatia**

**Tax ruling guidance published**

On July 17, 2015 guidance on tax rulings was published in the Official Gazette. Key elements include clarification of costs and the relevant issues whereby a taxpayer may file a ruling request.

**Cyprus**

**Amendments to tax law passed into law**

On July 30, 2015 the House of Representatives passed a number of
bills into law that had been proposed by the government, although certain tax-related bills have been deferred for consideration until after the summer vacation, including the extension of group loss relief to include foreign subsidiaries resident in EU member states and the introduction of anti-avoidance provisions for company reorganizations and to combat double non-taxation by removing Cyprus tax exemptions for dividends derived from hybrid instruments.

**Germany and the Netherlands**

Agreement signed to exchange information on tax rulings

Germany and the Netherlands signed an agreement on July 14, 2015 to exchange information on advance pricing agreements and advance tax rulings, where such agreements have an impact on taxation in the other state. The agreement applies to the 2015 calendar year and subsequent years and the two countries may also additionally agree to exchange information relating to earlier years.

For more information, see the [Dutch Government's webpage](#).

**Greece**

Urgent reforms introduced for negotiation and conclusion of agreement with the European Stability Mechanism

For more information, see [KPMG Tax News](#).

**Public Revenue Authority publishes clarifications on transfer pricing**

On July 3, 2015, Circular POL 1142/2015 clarified certain matters on transfer pricing, including the definition of Related Parties and the appropriate method of calculating the holding percentage of an indirect participation.

**Ireland**

Irish Revenue publishes new manual on capital gains tax

On July 9, 2015 the Revenue published a new manual on capital gains tax containing, among other provisions, a discussion of the introduction of an anti-abuse provision and restrictions on loss deductions for the disposal of assets.

For more information, see the [Guide to Capital Gains Tax](#).

**Luxembourg**

Corporate tax proposals

On July 10, the government's council approved a bill of tax
proposals that would affect most multinational groups with subsidiaries in Luxembourg. Among the measures included in the bill were provisions to transpose anti-hybrid rules and the general anti-abuse rules of the EU Parent-Subsidiary Directive into Luxembourg law, together with changes to the tax consolidation regime to allow eligible sister companies to form a tax unity group. In line with OECD principles, the bill also extends the eligibility for deferral of payment of exit taxes to include transfers to any third country, rather than EEA countries only, when companies or permanent establishments are transferred outside of Luxembourg.

For more information, see [Luxembourg Tax News](#).

**Portugal**

**Reduced corporate income tax rate, Madeira free zone**

Entities licensed to operate within the Madeira free zone may benefit from a reduced rate of corporate income tax (a 5% reduction until 2027). The provisions were published on July 1, 2015 as Law No. 64/2015.

**Legislative Decree published implementing Alternative Investment Fund Managers (AIFM) Directive 2011/61/EU**

On July 7, 2015 Legislative decree No. 124/2015 was published in the Official Gazette, implementing the AIFM Directive with effect from July 8, 2015. The directive is intended to create a common regulatory and supervisory framework for managers of Alternative Investment Funds.

**Slovenia**

**Government proposes amendments to Corporate Income Tax Law**

On July 23, 2015 the government proposed amendments to the Corporate Income Tax law, including implementation of Council Directives 2015/121 & 2014/86/EU amending the Parent Subsidiary Directive. Implementation of the Directives imposes limitations on exemptions on income from hybrid financial instruments and when the main purpose of the arrangement is to obtain tax advantages.

**Spain**

**Government adopts country-by-country reporting**

On July 11, 2015 a new Corporate Income Tax Regulation (CITR) was approved in Spain. The CITR makes changes to the Spanish transfer pricing regime with the introduction of new country-by-country reporting requirements in line with Action 13 of the OECD BEPS project for multinational groups with net turnover of EUR 750 million or more where the parent company is resident in
Spain for tax purposes.

**Sweden**

**Swedish Tax Agency clarifies exemption from WHT on dividends paid to companies established in Liechtenstein**

On July 9, 2015 the Swedish Tax Agency issued a statement which clarified that dividends paid to joint-stock companies established in Liechtenstein are considered exempt from dividend withholding tax (WHT). Although Sweden has no tax treaty with Liechtenstein, the imposition of WHT was considered incompatible with the freedom of establishment requirements of the EEA Agreement.

**Swedish Tax Agency clarifies procedures for exchange of information requests**

On July 9, 2015 the Swedish Tax Agency confirmed on what bases foreign countries should request tax information from Sweden. Non-EU Nordic states should request information under the Nordic Convention (1996). EU member states should request information under the Mutual Assistance Directive (2011/16/EU) and other states should do so under the Council of Europe - OECD Mutual Assistance Treaty (1988), or the relevant tax treaty.

**UK**

**Summer Budget 2015, Tax Provisions**

The Chancellor presented the post-election budget on July 8, 2015. Among tax provisions were proposals to reduce future corporation tax rates to 19% and subsequently 18% from 2020; to end corporation tax relief on goodwill on acquisitions from July 8, 2015; a decrease in the bank levy rates to 0.1% over six years and the introduction of an 8% bank tax surcharge as well as changes to the tax regime for non-domiciled residents. A measure was also introduced to restrict losses and other surplus expenses from being set off against the CFC charge on profits of controlled foreign companies, with effect from July 8, 2015.

For more information, see the HM Revenue & Customs [Explanatory Notes](#).

**Large businesses to publish tax strategies**

On July 22, 2015 HM Revenue and Customs (HMRC) published a consultation document containing proposals that large businesses should be bound to publish their tax strategies, with a nominated board director to be held legally responsible for doing so. Other proposals included the introduction of a voluntary code of practice on taxation for large businesses.
HM Revenue & Customs publishes consultation on proposals to strengthen sanctions for tax avoidance

On July 22, 2015 HM Revenue and Customs (HMRC) published a consultation document containing proposals for more effective deterrents to those who engage in tax avoidance arrangements. The proposals discuss measures to discourage the more persistent tax avoiders and their advisers.

For more information, see the HMRC consultation document.

Ukraine

Parliament adopts amendments to Tax Code regarding transfer pricing rules

On July 15, 2015 the Ukrainian Parliament approved amendments to the Tax Code to decrease penalties for failure to provide full information in a transfer pricing report while increasing the penalty for failure to submit a report. Other amendments include the annulment of the requirement to submit information on controlled transactions in the corporate income tax return.

Local Courts

Denmark

National Tax Tribunal rules on deductibility of foreign exchange losses on the sale of shares in non-resident subsidiary

On June 30, 2015, the Customs and Tax Administration published the decision of the National Tax tribunal in Case No. 122-0208149. The taxpayer had argued that to refuse a deduction for losses realized on the sale of shares of a subsidiary resident in another member state was incompatible with the freedom of establishment. The Tribunal held that such losses are not deductible as the Danish company had not opted to present its financial accounts in a foreign currency as permitted. The Tribunal also observed that cross-border transactions were not treated differently to domestic transactions and as such the measures were compatible with the freedom of establishment.

The Netherlands

Supreme Court decision on Luxembourg investment fund dividend
withholding tax claims

On July 10, 2015 the Supreme Court of the Netherlands rendered its judgment in the case of a Luxembourg SICAV that received Dutch portfolio dividends on which dividend withholding tax was levied. The fund was tax-exempt in Luxembourg and had claimed a full refund of the Dutch dividend tax withheld on its investment in Dutch companies. The Dutch Supreme Court denied the request for a refund, arguing that the Luxembourg fund is not objectively comparable to a Dutch fiscal investment institution since, if the Luxembourg investment fund were entitled to a refund of the Dutch withholding tax, non-resident participants in the Luxembourg fund would pay less tax than if they had invested directly in Dutch shares. In the latter case there is a 15% Dutch withholding tax, whereas there would be no Dutch or Luxembourg withholding tax on dividends paid by the Luxembourg fund.

For more information, see Meijburg and Co. Newsflash.

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