



CFE's Tax Top 5

Key tax news of the week



10 October 2016

1. CFE PAC Conference: "Involving tax advisers in fighting tax avoidance – What will change?" on 18 November in Ljubljana

On 18 November 2016, the CFE and its Slovenian member organisation ZDSS will host the 9th Tax Advisers' Professional Affairs Conference in Ljubljana, dealing with recent initiatives at EU, OECD and national level to involve tax advisers in reporting tax avoidance, and to introduce disincentives for advisers who continue to promote it:

Mandatory disclosure rules for promoters of certain tax planning schemes to counter BEPS (base erosion and profit shifting) have been examined by the OECD, but the OECD has refrained from explicitly recommending countries to introduce such rules.

The European Commission is considering mandatory disclosure rules at EU level, going further than the OECD standard, and even mentioning possible publication of the information reported.

The European Parliament has asked for a European Code of Conduct for all advisers and mandatory disclosure rules for advisers involved with certain jurisdictions, as well as stricter sanctions for advisers engaging in unlawful practices.

Lastly, the UK tax administration is currently consulting on making promoters of tax avoidance pay for revenue lost to tax planning.

Speakers and discussants from the OECD, the European Commission and national governments, as well as recognised tax practitioners will present and discuss these recently proposed actions, dealing with the following questions:

- Which of these seem best fit to achieve tax administrations' aim to reduce tax avoidance?
- Should such actions be a matter for the EU or the member states to regulate?
- Will and should these actions lead to further regulation of the tax advisory activity?
- Does a more regulated tax profession help government achieve its aim?, and
- How can the taxpayer's right to confidentiality and to receive advice by a trusted adviser be ensured?

Please check the dedicated CFE PAC Conference website for the programme and practical information: [EN](#)

2. State Aid: Commission publishes Belgian "excess profit" decision

On 27 September 2016, the European Commission published its decision of 11 January 2016 on the Belgian "Excess Profit" tax exemption in which it concluded that this scheme amounted to illegal state aid to multinational enterprises.

The Excess Profit exemption scheme allows Belgian resident companies and permanent establishments of foreign companies that are part of a multinational group to reduce their tax base in Belgium by deducting from their actually recorded profit an estimated 'excess profit' based on the hypothetical profit a standalone company in the same sector. Companies had to apply for an advance ruling to be eligible for this regime. The Commission's decision concerns 66 rulings issued between 2005 and 2014. The published decision also contains the names of companies that have benefited from the said regime.

- Official Journal of 27 September 2016: [EN](#) (All EU languages available)
- See short article in CFE European Tax & Professional Law Report December 2015 – February 2016: [EN](#)

3. ECtHR: No Human Rights violation by search warrant based on evidence obtained in breach of the law

On 6 October 2016, the European Court of Human Rights decided that two German citizens whose home had been searched by police, the search warrant being based on evidence illegally obtained by bank employees in Liechtenstein and sold to the German secret services, could not claim a violation of Article 8 (right to respect for the home) of the European Convention on Human Rights.

The Court found that the search had been carried out in accordance with the law. It noted in particular the settled case-law of the German Federal Constitutional Court according to which there was no absolute rule that evidence which had been acquired in violation of procedural rules could not be used in criminal proceedings. According to the ECtHR, the search had also been proportionate because German law offered adequate and effective safeguards against abuse of powers by police, because tax evasion is a serious offence, because there was no indication that the German authorities had deliberately and systematically breached the law in order to obtain information for the prosecution of tax crimes, because the warrant had been explicit and detailed as concerned both the offence being investigated as well as the items sought as evidence, and, lastly, because the couple had not alleged any repercussions on their personal reputation as a consequence of the search of their home.

- Judgment: [EN](#)
- Press release: [EN](#), [FR](#)

4. VAT: CJEU decides on proportionality of national rules on concealment of supplies and revenues

On 5 October 2016, the EU Court of Justice (CJEU) held in the Bulgarian preliminary ruling case C-576/15, Maya Marinova, that where goods are not in the warehouse of the taxable person to whom they have been supplied and the relevant tax documents have not been recorded in the accounts of that taxable person, national law may allow tax authorities to presume that the taxable person has sold those goods to third parties and determine the taxable amount of the sale of those goods according to the factual information at hand pursuant to rules not provided for in the EU VAT directive. These national rules however may not go further than necessary to ensure the correct collection of VAT and to prevent evasion.

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

5. CJEU decides on VAT-exemption for plasma obtained from blood

On 5 October 2016, the CJEU decided in the German preliminary ruling case TMD (C-412/15) that VAT-exempt supplies of human blood do not include supplies of plasma obtained from human blood where that plasma is not intended to be used for direct therapeutic purposes, but exclusively for the manufacture of medicinal products.

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

6. EP: “Panama” Committee to host public hearing on 13 October

On 13 October 2016, from 9.00 to 12.30, the European Parliament’s Committee on Money Laundering, Tax Avoidance and Tax Evasion (PANA) will organise a public hearing with international and supranational organisations, to understand how international standards in the area of information exchange for tax purposes and Anti-Money Laundering are set, and which are the bodies and mechanisms which assess their effective implementation and enforcement.

- PANA Programme : [EN](#)
- PANA Registration : [EN](#)
- PANA Webstreaming : [EN](#)

7. OECD updates on tax transparency and beneficial ownership developments

On 7 October 2016, the OECD published a report to the G20 ministers of finance providing an update on the OECD work on tax transparency with a special emphasis on beneficial ownership information.

- Report: [EN](#)

8. GD Taxud and IMF to host conference on tax, investment and innovation on 17-18 November

On 17 and 18 November 2016, the European Commission’s Directorate-General Taxation and Customs Union and the International Monetary Fund will host a conference in Brussels titled 'Taxation, Investment and innovation: a triptych for balanced growth'. It will discuss the role taxation can play in supporting investment, innovation and growth, including the questions:

- o Why and how does taxation matter for economic growth?
- o How can fiscal incentives support knowledge creation?

- How can tax systems help grow innovation leaders?
- Tax and the collaborative economy: what are the challenges and opportunities?, and
- How will technological advances change taxation over the next decade?

The event is free of charge. Registration is required by 10 November 2016.

- Press release: [EN](#)
- Practical information: [EN](#)

The selection of the remitted material has been prepared by Piergiorgio Valente / Filipa Correia / Rudolf Reibel / Aleksandar Ivanovski

Follow CFE on [Linked in](#) 