



13 December 2016

### **European Commission refers France to the Court of Justice for discriminatory taxation on dividends**

European Commission has referred France to the Court of Justice of the European Union for failure to comply with the judgment C-310/09 *Accor* of 15 September 2011. The infringement action against France was initiated following a reasoned opinion sent on 29 April 2016 to France, which was not complied with.

European Commission takes the view that France maintains discriminatory taxation of dividends coming from other EU Member states which is contrary to the freedom of establishment and freedom of movement of capital, specifically on three points:

- France does not take into account the tax already paid by non-French subsidiaries;
- The French tax system limits tax credits of the dividend redistributed by a non-French subsidiary. Such limitations amount to discriminatory treatment between companies receiving dividends originating in other Member States and those receiving dividends of French origin;
- France also maintains administrative requirements concerning evidence in breach of the criteria established in the *Accor* judgment.

Concerning the refund of taxes paid in France by entities with subsidiaries in other EU Member states under the 'advance payment mechanism', *Conseil d'Etat* has taken a restrictive interpretation of C-310/09 *Accor* judgment. The Commission maintains that the French interpretation is incompatible with EU law, which led to the infringement procedure.

Link: [European Commission December infringement package](#)

### **French *Conseil constitutionnel* repeals public country-by-country reporting**

*Conseil constitutionnel* declared parts of the Act on transparency, control of corruption and modernisation of the economy (*Loi relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*) which enacted public country-by-country reporting by multinational companies contrary to the Constitution.

The Decision 2016-741, essentially upheld other sections of the Act, but repealed the section promulgating public-country-by-country reporting obligation for multinational companies with a turnover exceeding €750 million, that had originally been planned to enter into force from 2018.

The *Conseil constitutionnel* recognised that the purpose of public country-by-country reporting obligations is tackling fiscal fraud and tax avoidance, but the measure was found to be contrary to the principles of proportionality, going beyond what was necessary to achieve the aim of the legislation. Also, the section was found to be in breach of the right to do business and entrepreneurship.

### **Failure to reach agreement of proposed amendments to ATAD Directive**

At the recent ECOFIN meeting on 6 December agreement could not be reached on the proposed changes to the Anti-Tax Avoidance Directive (ATAD) to extend hybrid mismatch rules to third countries and specific scenarios within EU Member States.

It is believed that disagreements arose from U.K. proposals in relation to exemptions for the financial services sector, and a proposal from the Netherlands to extend the effective date of the rules.

### **CFE encourages members to participate in OECD tax certainty questionnaire**

CFE is encouraging member organisations to participate in the OECD Survey on tax certainty. The survey is available online and should take 15-20 minutes to complete.

The Survey has been launched in response to the OECD receiving a mandate from the G20 leaders and Finance Ministers to work on solutions to support certainty in the tax system with the aim of promoting investment, trade and balanced growth. The survey builds on responses gathered by the European Tax Policy Forum (ETPF) and the Oxford University Centre for Business Taxation (OUCBT) in early 2016.

The survey will run from 18 October to **16 December 2016**. It represents an opportunity to identify specific tax policy issues for the future G20 tax agenda and to contribute to creating practical and concrete solutions for a more certain and predictable tax system. The results of the survey will be published and presented to the G20 leaders in 2017.

The Business Survey is available at the following link: [link](#)

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