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# CFE's Tax Top 5

Key tax news of the week

**16 August 2017**

**EU Court of Justice ruling in C-386/16 *Toridas* on VAT zero-rated intra-EU supply of goods**

The Court of Justice of the EU ("CJEU") on 26 July 2017 rendered a judgment in the VAT case C-386/16 *Toridas* where it established that the zero rating for intra-EU supplies of goods in a chain which involves intra-EU movement applies only to the supply to which the transport of the goods can be attributed to.

This preliminary ruling from the Lithuanian Court concerned interpretation of Articles 138(1), 140(a) and 141 of the VAT Directive. In particular, the referring Court inquired whether the supply of goods by a taxable person who is established in one Member State must be exempt under those provisions in the case where, before that supply transaction is entered into, the purchaser (a person identified as being a taxable person in a second Member State) expresses an intention to resell the goods immediately, before transporting them from the first Member State, to a taxable person established in a third Member State, for whom those goods are transported (dispatched) to that third Member State. The referring Court sought to establish, in particular, whether this type of supplies of goods may be zero-rated pursuant to the provisions of the VAT Directive applicable to intra-EU transactions.

Interpreting Article 138 (1) of the VAT Directive, CJEU ascertained that a supply of goods by a taxable person established in a first Member State is not exempt from VAT under that provision where, prior to entering into that supply transaction, the person acquiring the goods, who is identified for VAT purposes in a second Member State, informs the supplier that the goods will be resold immediately to a taxable person established in a third Member State, before he takes them out of the first Member State and transports them to that third taxable person, provided that that second supply has in fact been carried out and the goods have then been transported from the first Member State to the Member State of the third taxable person. The fact that the first person acquiring the goods is identified for VAT purposes in a Member State other than that of the place of the first supply or that of the place of the final acquisition is not a criterion for classification of an intra-Community transaction or, in itself, evidence sufficient to show that a transaction is an intra-Community one.

CJEU also noted that Article 138(1) of the VAT Directive obliges the Member States to exempt supplies of goods meeting the substantive conditions which are listed there exhaustively in C-21/16 *Euro Tyre*, para 29. The processing of the supplied goods does not form part of the substantive conditions laid down by that article. As regards a chain of two supplies such as those at issue in the main proceedings, the first supplies cannot be classified as intra-EU supplies since no intra-EU transport could be ascribed to them. Therefore, processing of the goods, in the course of a chain of two successive supplies, such as that at issue in the main proceedings, carried out on the instructions of the middleman acquiring the goods and before the goods are transported to the Member State of the person finally acquiring them, has no effect on the conditions for any exemption of the first supply where that processing takes place after the first supply.

**New Luxembourg IP taxation legislation published**

The amended Luxembourgish Act on Taxation of Intellectual Property ("IP") published on 7 August reflects the efforts of the Luxembourg government to promote R&D activities in the country within the compliance framework set by OECD BEPS Action 5, which requires substantial activity for preferential IP regimes. Under the proposal, capital gains and income from IP assets shall be exempt from corporate taxation and municipal tax up to 80%, and fully exempt from net wealth tax. Eligible IP includes patents, software protected by copyrights, utility models etc., whilst eligible costs include any costs related to R&D directly to development of an eligible asset. The new legislation is set to become effective on 1 January 2018.

**Belgium: Corporate Tax Rate to be reduced to 25% by 2020**

Under the proposed Belgian tax reform, which is subject to parliamentary discussion and approval, the corporate income tax rate is set to gradually decrease from 34% to 25% in 2020. SMEs will benefit from a reduced rate of 20.4% under certain circumstances. The Belgian tax legislation reform proposal envisages implementation of the EU Anti-Tax Avoidance Directives, introduction of CFC legislation, reform of the notional interest deduction, tax consolidation allowing Belgian group entity's losses to be offset against profits of another Belgian group in a fiscal year, and, reform of the holding regime by extending the minimal participation value for eligible participation exemption, amongst other issues. The measures are likely to enter into force on 1 January 2018, subject to parliamentary approval.

**Conference 'Current Issues in European Tax Law' in Tallinn on 7 September**

The Estonian Ministry of Finance, supported by IBFD, is organising a tax conference on 7 September 2017. The conference aims to address the recent EU initiatives in tax, such as the dispute resolution directive and the proposal on tax intermediaries and mandatory disclosure rules.

For more details on the conference and registration please see the following link at the website of the Estonian EU presidency.

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