CFE EUROPEAN TAX REPORT 2006/01

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C.F.E. NEWS:

► ***New C.F.E. Opinion Statement of the C.F.E. Taskforce on ECJ cases on the case Banca Popolare di Cremona Regional Tax on Productive Activities (IRAP) (Case C-475/03)***

A new C.F.E. Opinion Statement has been produced by the C.F.E. Taskforce on ECJ cases on the case Banca Popolare di Cremona Regional Tax on Productive Activities (IRAP) (Case C-475/03). It can be found on the C.F.E. website, www.cfe-eutax.org (under the section "Fiscal issues", choose "opinion statements" on the left hand side marginal).

LATEST EUROPEAN DEVELOPMENTS

European Commission:

► ***ITALIAN BANKING SECTOR, TAX GRANTS, INCOMPATIBILITY WITH THE EU LAW***

The Court of Justice confirms the Commission's decision on the incompatibility with the common market of aid benefiting the Italian banking sector

In the 1990s the Italian authorities initiated a process of privatization of the Italian banking system. In the context of that reform they adopted Law No 461/98 in order to encourage the restructuring and consolidation of the banking sector. In implementation of that law Legislative Decree No 153/99 granted tax advantages for certain restructuring operations in the banking sector. In a decision of 11 December 2001 the Commission took the view that the Italian legislation had introduced an aid scheme incompatible with the common market and ordered recovery of the aid granted unlawfully to the beneficiary banks, which had to pay an amount equal to the tax not paid as a result of that scheme.

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► ***CAPITAL GAINS TAX RELIEF, DISCRIMINATORY RULES, SWEDEN***

Commission refers Sweden to Court over discriminatory rules on capital gains tax relief on home sales

The European Commission has decided to refer Sweden to the European Court of Justice because, under Swedish tax law, capital gains from home sales attract tax relief only if the sold home is situated in Sweden and the sales proceeds are reinvested in a replacement residence in Sweden. The unavailability of the tax relief where the sold dwelling is situated outside Sweden or where the proceeds are used to acquire a replacement home outside Sweden is contrary to EC Treaty rules, including those on the free movement of persons.

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► *VAT EXEMPTIONS, SUPPLIES OF GOODS, SPAIN*

VAT – Commission asks Spain to amend treatment of supplies of goods made to the Catholic Church

The European Commission has decided to send to Spain a formal request to bring into line with Community law some tax commitments that it has made under the "Agreement between the Spanish State and the Holy See on economic affairs" of 3 January 1979. Spain maintains that the Agreement in question obliges it to apply an exemption from VAT to certain supplies of goods made to the Catholic Church.

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► *COMPANY LAW, CORPORATE GOVERNANCE, ACTION PLAN*

Company law and corporate governance: consultation on future priorities for Action Plan

The European Commission has launched a public consultation on future priorities for the Action Plan on "Modernising Company Law and Enhancing Corporate Governance in the EU", which was presented in May 2003. All interested parties are invited to reply to a series of 14 questions on possible future priorities by 31 March 2006. This will be followed by the publication of a report on the answers received.

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Frequently Asked Questions: EN

► *FINANCIAL REPORTING, STRENGHTHENED ACCOUNTING RULES*

Commission welcomes Parliament's support for strengthened accounting rules and easing burdens on small companies

The European Commission has welcomed the European Parliament's vote on 15 December 2005 to approve the proposal for a Directive amending the European Union's Accounting Directives. The amendments will bring improved disclosure by obliging listed EU companies to provide annually a corporate governance statement and providing more insight into the use of off-balance sheet arrangements and unusual transactions with related parties, such as the spouse of a board member.

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► *EU FINACIAL SERVICES POLICY 2005-2010*

EU financial services policy for the next five years

On the 5th of December, 2005 the European Commission presented its new financial services strategy for the next five years. Although progress has been made through the successful completion of the Financial Services Action Plan (FSAP), the Commission concludes that the EU financial services industry (banking, insurance, securities, asset management) still has strong untapped economic and employment growth potential. The Commission's new strategy explores the best ways to effectively deliver further benefits of financial integration to industry and consumers alike.

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Financial Services Policy for 2005-2010, White Paper: EN

► *FINANCIAL SERVICES, FINANCIAL REPORTING, DEVELOPMENTS, SPEECH*

Recent Developments in the Internal Market for Financial Services and Financial Reporting, speech by Commissioner Mr. McCreevy

The five years of the Financial Services Action Plan have been a time of concentrated legislative change. Today it is clear that there is no appetite – or need - for many new regulatory initiatives. There is therefore wide support for the Commission's suggestion to consolidate progress and complete unfinished business in a dynamic way.

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► ***MORTGAGE CREDIT, COMMISSION POLICY, SPEECH***

The Commission Policy on Mortgage Credit, speech by Commissioner McCreevy

Commission's work in the wholesale sector is advanced thanks to the achievements of the Financial Services Action Plan. It is with this in mind that Commission has turned its attention to retail financial services markets. As the Commission has mentioned in our White Paper on our Financial Services Policy for 2005-2010 published just this week, retail financial services are the next frontier in the single market project. And the Commission's consideration of the EU mortgage credit market is a flagship in the retail financial services agenda.

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► ***CAPITAL MARKET, BETTER REGULATION, SPEECH***

Towards a Better Regulated European Capital Market, speech by Commissioner McCreevy

The financial services industry has been calling for a regulatory pause. There will only be a small number of areas where legislative initiatives may be necessary. In some areas, Commission has resisted tough pressure to legislate. For example, there have been loud calls for the regulation of credit rating agencies or financial analysts.

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► ***INTERNAL MARKET, DEVELOPMENTS, SPEECH***

Ireland: Making the Most of the Internal Market, speech by Mr. McCreevy

Tax competition exists when people can reduce their tax burden by shifting their resources – whether financial capital, intellectual capital, physical capital, or labour – from a high tax jurisdiction to a low one. The ability of people and companies to shift their resources in this way imposes a discipline on profligate governments.

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European Parliament:

► ***VOTE ON COMPANY TAXATION***

"Towards more transparent EU-wide company taxation: Parliament strongly supports a common corporate tax base"

Pier-Luigi Bersani's (PSE/Italy) report on a Common Consolidated Corporate Tax Base (CCCTB) was strongly endorsed by the plenary of the European Parliament and adopted with a sound majority of 392 votes against 121 and 89 abstentions.

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Council:

► ***15% MINIMUM STANDARD RATE, EXTENSION TILL 2010***

Council extends 15% minimum standard VAT rate until 2010

The Council adopted today a directive extending until the end 2010 the minimum standard rate of value added tax at 15%. The directive maintains the minimum standard rate of VAT applicable in EU member states currently in force, that was normally due to expire on 31 December 2005, for a further period long enough to cover the ongoing strategy to simplify and modernise current EU legislation on VAT. The current minimum level of VAT is set at 15%.

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► ***REDUCED VAT RATES, CODE OF CONDUCT ON BUSINESS TAXATION***

2698th Council Meeting Economic and Financial Affairs, Reduced VAT Rates, Code of Conduct on Business Taxation

The Council held an exchange of views, on the basis of a compromise proposal from the presidency, on a proposal for a directive aimed at modifying EU rules on reduced rates of value-added tax applied by the member states. It agreed to refer the dossier to the European Council on 15 and 16 December with a view to reaching an agreement.

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OECD:

► ***MODEL TAX CONVENTION, PUBLIC CONSULTATION MEETING***

Public Consultation Meeting on the Application of Article 15 of the OECD Model Tax Convention to Short-term Foreing Assignments.

The OECD Centre for Tax Policy and Administration (the CTPA) is organising a public consultation meeting on the application of Article 15 of the OECD Model Tax Convention to short-term foreign assignments. That meeting will take place on Monday, 30 January 2006, in Paris at the OECD offices.

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► ***E-COMMERCE, TAXING BUSINESS PROFITS, CURRENT TREATY RULES***

Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce?

The Technical Advisory Group on Monitoring the Application of Existing Treaty Norms for Taxing Business Profits (the "Business Profits TAG") was set up by the Committee on Fiscal Affairs in January 1999 with the general mandate to “examine how the current treaty rules for the taxation of business profits apply in the context of electronic commerce and examine proposals for alternative rules”.

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► ***SUB-CENTRAL GOVERNMENTS, FISCAL RULES***

Fiscal rules for sub-central governments: design and impact

The paper examines how fiscal rules can help to ensure that pressure on resources is minimised and available resources are used efficiently. Drawing on questionnaire responses and other sources, this paper gives a detailed picture of fiscal rules for sub-central governments in place among a number of OECD countries. The paper examines the rationales for using fiscal rules, the various impacts fiscal rules can have, the factors making for effective implementation and the interactions between the various types of rule.

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European Court of Justice:

► ***C-446/03 Marks & Spencer plc v David Halsey (Her Majesty’s Inspector of Taxes): Judgment took place 13 of December***

As Community law now stands, Articles 43 EC and 48 EC do not preclude provisions of a Member State which generally prevent a resident parent company from deducting from its taxable profits losses incurred in another Member State by a subsidiary established in that Member State although they allow it to deduct losses incurred by a resident subsidiary. However, it is contrary to Articles 43 EC and 48 EC to prevent the resident parent company from doing so where the non-resident subsidiary has exhausted the possibilities available in its State of residence of having the losses taken into account for the accounting period concerned by the claim for relief and also for previous accounting periods and where there are no possibilities for those losses to be taken into account in its State of residence for future periods either by the subsidiary itself or by a third party, in particular where the subsidiary has been sold to that third party.

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► ***C-384/04 Commissioners of Customs & Excise Attorney General v Federation of Technological Industries: Opinion of the Advocate General Poiares Maduro, delivered on 7 December 2005***

This reference for a preliminary ruling from the Court of Appeal (Civil Division) of England and Wales concerns the interpretation of Articles 21(3) and 22(8) of Sixth Council Directive 77/388/EEC. The reference has been made in the course of an application for judicial review in proceedings between 53 traders in mobile telephones and computer processing units and their trade body, the Federation of Technological Industries and the Commissioners of Customs and Excise and H.M. Attorney‑General.

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► ***C‑63/04 Centralan Property Ltd v Commissioners of Customs & Excise: Judgment took place 15 December 2005***

The reference was made in the course of proceedings between Centralan Property Limited ('Centralan') and the Commissioners of Customs & Excise ('the Commissioners'), who are responsible for the collection of VAT in the United Kingdom, concerning the adjustment of deductions of input VAT.

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