

TAXeNEWS Europe



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Contents

ECJ CASES

Belgium	ECJ referral on Belgian taxation of interest paid by foreign banks to individuals
Germany	ECJ decision on German gift tax allowance for non-residents: Mattner case
Netherlands	ECJ judgment on Dutch elective taxpayer status regime: Gielen case
Portugal	AG opinion on Portuguese taxation of interest earned by non-resident financial institutions

NATIONAL DEVELOPMENTS

Austria	Consequences for Austrian law of ECJ's decisions on Société de Gestion Industrielle SA and X Holding
Estonia	Supreme Court confirms incompatibility with EU Treaty of withholding tax on outbound dividend payments
Finland	Finnish Supreme Administrative Court on the ECJ's decision in the Aberdeen case
Germany	Federal Supreme Court upholds Lower Finance Court's dismissal of offset of foreign losses on formal grounds
Germany	Case pending with Federal Finance Court (BFH) on taxation of family foundations abroad
Germany	Lower Court speaks out on competence for claims for refund of withholding tax
Germany	Federal Finance Court decision on former loss-recapture-method
Germany	Case pending with Federal Finance Court regarding write downs/capital losses of participations of loss making subsidiaries abroad
Netherlands	Government refusal to refund dividend withholding tax is contrary to EU law, compensation due
Italy	Update on the refund of withholding taxes on outbound dividends
Spain	Amendments to the Spanish Non-Resident Income Tax Act
Spain	Spanish Court of Appeal orders refund of unduly withheld dividend tax to 3 Dutch pension funds

United Kingdom	Compound interest claims – UK Court of Appeal decision in VIC GLO
United Kingdom	Investment trusts can now invest more than 15% of assets into certain foreign funds

EU DEVELOPMENTS

EU	Proposal for EU Directive on CCCTB may be tabled in early 2011
EU	Former EU Tax Commissioner Monti presents recommendations on possible EU-wide tax reforms to re-launch Single Market
EU	New consolidated versions of TEU and TFEU available
EU	European Commission requests Belgium, Denmark and the Netherlands to change exit tax provisions for companies and closes a case against Sweden
EU	European Commission opens public consultation on double taxation problems in the EU
Belgium	European Commission formally requests Belgium to amend discriminatory exit tax provisions in case of a transfer of fiscal residence of a company to another Member State
Belgium	European Commission formally requests Belgium to amend its tax provision which requires the appointment of a fiscal representative for foreign operators of securities lending systems
France	European Commission challenges the French discriminatory taxation regime of foreign pension and investment funds
Germany	European Commission formally requests Germany to amend its anti-abuse provision concerning the relief of withholding taxes
Norway	EFTA Surveillance Authority issues formal notice to Norway regarding Norwegian exit tax rules

STATE AID

Cyprus	Parliament enacts The Merchant Shipping (Fees and Taxing Provisions) Law of 2010
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ABOUT THE EUDTG

EUDTG CONTACT LIST

ECJ CASES

Belgium – ECJ referral on Belgian taxation of interest paid by foreign banks to individuals

According to article 21, 5° of the Belgian Income Tax Code, up to an amount of EUR 1.660 per year (subject to an annual indexation), interest arising from a savings deposit is not considered to be movable income subject to Belgian taxation provided, amongst other conditions, that the interest results from a savings deposit held at a financial institution located in Belgium.

On 25 June 2009, the European Commission sent Belgium a formal request to amend the said legislation considering that the exemption is not applicable to interest income resulting from savings deposits held at financial institutions located outside Belgium. The Commission therefore opined that the difference in treatment of interest income resulting from savings deposits depending on where the paying financial institution is located violates the free movement of capital and freedom to provide services. As Belgium has failed to comply with the Commission's request, the Commission referred Belgium to the ECJ on 5 May 2010.

-- Olivier Hermand, Patrice Delacroix and Mathieu Protin, Belgium; olivier.hermand@pwc.be

Germany – ECJ decision on German gift tax allowance for non-residents: Mattner case (C-510/08)

On 22 April 2010, the ECJ decided that a German gift tax provision according to which the tax allowance for non-residents is smaller than that for residents is in breach of the free movement of capital.

In 2007, Mrs. Mattner, a Dutch resident, acquired real estate located in Germany from her Dutch resident mother by way of donation which is subject to gift tax in Germany. Whereas gifts from or to German residents are granted a tax allowance of 205.000 EUR, the tax allowance for gifts between two non residents amounts to only 1.000 EUR. Mattner appealed against the tax assessment and the Lower Finance Court of Düsseldorf referred the case to the ECJ.

First, the ECJ decided that a gift of a German real estate between two Dutch residents is not considered to be a purely domestic situation. The provision restricts the free movement of capital as the different tax allowance leads to a higher tax burden for a gift between non-residents which reduces the value of the real estate.

The ECJ is of the opinion that the situation of a gift between two non-residents is comparable to that in which either the donor or the donee is a German resident. The ECJ rejected the argument of the German Government that the different tax allowances took into account the different individual situations of resident and non-resident taxpayers. Whereas gifts between non-residents would only be subject to tax as far as specific German located assets are concerned, gifts from or to a German resident would comprise the entirety of the worldwide

assets. In the ECJ's view, Germany itself acknowledged a comparable situation by applying the same tax base and the same tax rate in both situations.

Finally the ECJ is of the opinion that such a restriction can not be justified. The ECJ rejected the argument that the non-resident might benefit from a further tax allowance in its State of residence, stating that a Member State could not rely on the existence of an advantage granted unilaterally by another Member State.

-- Gitta Jorewitz and Juergen Luedicke, Germany; juergen.luedicke@de.pwc.com

Netherlands – ECJ judgment on Dutch elective taxpayer status regime: Gielen case (C-440/08)

On 18 March 2010, the ECJ decided in the Gielen case that a rule of Dutch national tax law which discriminates between resident and non-resident taxpayers cannot be justified by providing a non-resident taxpayer with an option to be taxed as a resident taxpayer.

For Dutch income tax purposes, a non-resident taxpayer can choose to be taxed as a resident taxpayer. This optional residency regime, combined with rules for the avoidance of double taxation, was introduced by the Netherlands in the wake of the *Schumacker* case (C-279/93), and is intended to ensure compliance with EU Law.

Mr Gielen is a German resident who operates a glasshouse horticulture business in Germany. He set up a permanent establishment in the Netherlands. In 2001 he worked more than 1225 hours for that business in Germany, whereas he worked less than 1225 hours for the establishment in the Netherlands. As a result, he was denied the self-employed person's deduction because he did not meet the 'hours test'. This test corresponds to the provision during the calendar year of at least 1225 hours of work for one or more undertakings from which the taxable person derives profit as a business operator. In respect of a non-resident taxpayer, account is taken only of hours worked in the Netherlands.

The ECJ ruled in favour of the taxpayer. It held that the 'hours test' constitutes a restriction on freedom of establishment, because it takes no account of working hours in the home State of a non-resident taxpayer. This discrimination cannot be taken away by an option to be treated as a resident taxpayer.

The optional residency regime cannot justify a discriminatory refusal of income tax deductions. Examples include deductions such as the one at issue, and person-related deductions and deductions of mortgage interest payments by a non-resident taxpayer who receives all or almost all of his taxable income in the Netherlands.

Litigant was represented by PricewaterhouseCoopers in the Netherlands.

-- Sjoerd Douma and Anna Gunn, Netherlands; sjoerd.douma@nl.pwc.com

Portugal – AG opinion on Portuguese taxation of interest earned by non-resident financial institutions (C-105/08)

On 25 March 2010, AG Kokott held that the European Commission did not present adequate factual evidence in support, when it referred Portugal to the ECJ regarding the fact that interest earned by non-resident financial institutions is subject to a heavier tax burden than interest earned by resident financial institutions.

According to article 4 (2 and 3 (c3)) of the Portuguese Corporate Income Tax (CIT) code, income obtained in Portugal by non-resident entities is subject to CIT in Portugal. Articles 87 (4c) and 94 (1c, 2, 3b, 4 and 5) state that interest payments are subject to a 20% withholding tax, being a payment on account against the final tax due when obtained by resident entities, and having the nature of a final tax, when obtained by non-resident entities. The withholding tax rate can be reduced by applying the Double Tax Treaties concluded by Portugal with other EU Member States.

According to article 97 of the CIT Code, an exemption of withholding tax applies in case of payment of interest by resident entities to resident financial institutions. This means that resident financial institutions are taxed on their net profit (they can deduct costs incurred with their activity, namely refinancing costs) at the rate of 25%, whereas non-resident financial institutions are taxed on the gross amount of the interest earned at the rate of 20%. The Commission considers that this difference in treatment results in a heavier tax burden for non-resident financial institutions and therefore it constitutes an infringement of the EC Treaty and the EEA Agreement, disrespecting the freedom to provide services and the free movement of capital.

The AG considers that the matter of whether there is a heavier tax burden for non-resident financial institutions than for resident financial institutions depends on the tax rate and on the relative level of costs in relation to gross interest income. Although the tax rate applicable to non-resident financial institutions (20%) is lower than that applicable to resident financial institutions (25%), the taxable income of resident financial institutions is lower than that of non-resident financial institutions, as they can deduct costs incurred with the activity. The infringement would only be proved if the taxable income of resident financial institutions was reduced in such a way that the tax burden, even with the higher tax rate of 25%, was lower than the one obtained by taxing the gross income at the rate of 20%.

We note that, contrary to what happens in respect of services, it may be more difficult, if not impossible, to determine the amount of costs related to the interest derived from the financial transactions.

The AG also believes that the infringement could be based on a different argument. In this sense, the AG argues that when a resident financial institution decreases its profit margin on interest earned, maintaining the refinancing costs, the tax burden also decreases in the proportion of the profit margin lost, leaving the relative tax burden unaltered. However, when a non-resident financial institution decreases its profit margin, maintaining the refinancing costs, the tax burden does not decrease in the proportion of the profit margin that was lost, but only in

the proportion of the gross amount of interest lost. This results in foreign financial institutions being in an unfavourable position towards the market. It also means that foreign financial institutions must at least obtain a profit margin equal to the amount of the tax withheld in order to not suffer any losses. On the other hand, resident financial institutions can offer more advantageous conditions and also have profit after the payment of taxes.

Since the Commission did not base its argumentation on these facts, the AG held that the Commission did not present adequate factual proof that interest payments made to non-resident financial institutions are or may in certain cases be taxed at a higher effective rate and therefore the case should be considered unfounded by the ECJ.

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[Back to top](#)

NATIONAL DEVELOPMENTS

Austria – Consequences for Austrian law of ECJ's decisions on *Société de Gestion Industrielle SA* and *X Holding*

Société de Gestion Industrielle SA

In case [C-311/08](#), *Société de Gestion Industrielle SA (SGI)*, the ECJ decided, that, under Belgian tax law, the unequal tax treatment of cross-border group services not being in line with arm's length requirements (interest below arm's length is taxed) – compared to equal domestic situations (interest below arm's length is not taxed) does not violate EU Law. The different tax treatment is justified by the necessity of guaranteeing a balanced allocation of the power to tax within the EU and the necessity of avoiding tax abuse.

Under Austrian Income Tax Law – similar to the Belgian tax regime – cross-border group services which do not comply with arm's length requirements (e.g. interest free loans or loans bearing interest below arm's length) at the level of the Austrian service providing company triggers income taxation of the deemed advantage granted while in case of comparable domestic relationships no taxation is triggered. This discrepancy was heavily criticized in the past by Austrian tax experts as not being in line with EU Law. However, under consideration of the ECJ's opinion in case *SGI*, the regulation under the Austrian Income Tax Act appears not to violate EU Law.

X Holding

In the course of case [C-337/08](#) *X Holding*, issued in February 2010, the ECJ decided that the contested exclusion of non-resident subsidiaries under the Dutch tax group regime (formation of a "single tax entity") is, in principle, not in conformity with the freedom of establishment but can be justified. As decided in case [C-446/03](#), *Marks & Spencer*, the freedom of establishment does not preclude the legislation of a Member State which does not allow including foreign subsidiaries in a domestic tax group scheme. Furthermore, the Dutch approach in case *X Holding* was classified as being in line with EU Law although the tax losses of foreign permanent establishments can be used at the level of their Dutch headquarters (subject to a special recapture taxation scheme).

Under the Austrian tax group regime, tax losses of foreign subsidiaries (so-called "group members") can be used at the level of their Austrian parent company (so-called "group leader/parent"). However, in case the foreign subsidiary is excluded from the Austrian tax group, significantly reduces its business or is liquidated, the foreign losses used at Austrian shareholder level in former periods have to be taxed (subjected to recapture taxation).

In the case of foreign permanent establishments (PEs), foreign tax losses can be used by their Austrian headquarters as well, however, without the necessity to tax previously used losses in Austria at headquarter level in case the foreign PE is closed or reduces its size. This differentiation between foreign subsidiaries and foreign PEs with regards to the Austrian

recapture taxation mechanism to be applied was heavily criticized by Austrian tax experts in the past.

Since the ECJ in case *X Holding* refuses the comparability of foreign subsidiary structures with foreign PE structures (no comparison of different cross-border scenarios but only of cross-border with domestic scenarios), no infringement of EU Law appears to result from the different recapture taxation mechanism for losses resulting from foreign subsidiaries and/or PEs of Austrian companies as defined under Austrian tax law.

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Estonia – Supreme Court confirms incompatibility with EU Treaty of withholding tax on outbound dividend payments

On 20 April 2010, the Supreme Court rejected the appeal in cassation by the Tax and Customs Board against the decision of the Tallinn District Court (Court of Appeal) of 25 November 2009, which found that withholding tax on outbound dividends is incompatible with the EC Treaty (now: Treaty on the Functioning of the EU (TFEU)). This means that the Tallinn District Court's decision has come into force and that the dispute is ultimately over.

In the case at hand, an investment fund (UCITS) established under Luxembourg law as a legal entity, owned shares in an Estonian resident corporation and received dividends in 2004 and 2005. Dividends distributed to a non-resident having less than 20% participation in an Estonian legal entity were subject to a withholding tax. The fund claimed that the situation whereby tax was withheld from dividends paid to a foreign investment fund was in violation of Articles 56 and 58 of the EC Treaty because there was no tax withheld from dividends paid to a domestic UCITS.

Since in Estonia UCITS can only be established as a contractual fund, whereas the Luxembourg UCITS was a legal entity, the dispute related to whether the foreign fund established as a legal entity should be compared to an Estonian fund established as a (non-taxable) contractual fund (i.e. pool of assets) or to a (taxable) Estonian legal entity.

On 10 May 2007, the Court of First Instance found that the comparison should be made purely on the legal status of the entity and found that there was no incompatibility with the EC Treaty. Then, on 13 May 2008, the Court of Appeal concluded that a request for a preliminary ruling from the ECJ was justified in the case at issue and gave the parties until 10 June 2008 to present their views on the questions to be submitted to the ECJ. But it suspended the proceedings thereafter until the decision in the case [C-303/07](#) (*Aberdeen Property Fininvest Alpha*) was made. On 25 November 2009, the Estonian Court of Appeal held, differently to the Court of First Instance, that the comparison made on the basis of the economic functions which the funds are performing, should be taken as a basis to determine whether the free movement of capital was violated or not. Based on this comparison, the court found that the different treatment existed. The court did not find any applicable justifications and concluded that the withholding tax on outbound dividends in Estonia is incompatible with the EC Treaty.

Based on the Supreme Court's decision, funds should consider filing refund requests in Estonia for excessively withheld tax on dividends in 2007 and 2008 (i.e. within the statutory time limits which is 3 years in Estonia).

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Finland – Finnish Supreme Administrative Court on the ECJ's decision in the Aberdeen case (C-303/07)

The Finnish Supreme Administrative Court issued its decision (SAC 2010:15) in the so-called *Aberdeen* case on 12 March 2010. In short, the Supreme Administrative Court stated in line with the ECJ decision that Finnish withholding tax should not be levied on the dividend payable by a non-listed Finnish subsidiary to its parent company, a Luxembourg SICAV.

The Supreme Administrative Court decision does not provide for any answers to questions that remained open in Finland after the ECJ decision in C-303/07, *Aberdeen* such as the question of Finnish withholding tax on dividends distributed by a Finnish listed company to a SICAV. In such a case, the applicable Finnish tax rules would differ from the ones applicable in the *Aberdeen* case.

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Germany – Federal Supreme Court upholds Lower Finance Court's dismissal of offset of foreign losses on formal grounds

The claimant, a German national, had been living in Austria where she had generated losses as a tax resident in 2003. After her return to Germany, she sought to offset these losses against profits from professional services provided in Germany, and attached to her income tax declaration for 2004 a letter in which she asked for taking into account her Austrian losses generated in 2003. The Lower Finance Court of Lower Saxony dismissed the deductibility of these losses mainly based on the principle of territoriality (for details see EUDTG Newsletter [Issue 2009 – nr. 006](#)).

On appeal, the Federal Supreme Court (BFH) rejected the deductibility of the losses as these losses had not been separately determined within the applicable formal administrative proceedings. Under German law, only losses which are separately determined as of the end of each fiscal year by way of a separate assessment notice are considered in the income tax assessment for the subsequent fiscal year. The Court thus held that in the absence of formal loss assessment proceedings for 2003 the matter could not be decided upon within in the personal income tax assessment proceedings for 2004. It thus explicitly refrained from any technical reasoning on material EU Law aspects.

-- Raimund Behnes and Juergen Luedicke, Germany; juergen.luedicke@de.pwc.com

Germany – Case pending with Federal Finance Court on taxation of family foundations abroad

The Federal Finance Court (BFH) has to decide on the EU law conformity of taxation of family foundations abroad according to the former Sec. 15 German Foreign Tax Code (AStG). The claimant is inheritor of her mother which had established a foundation in Liechtenstein in 1995. At the time of setting up the foundation, the mother was not resident in Germany for tax purposes. However, in 1997 the mother moved to Germany and therefore established German tax residency. Based on Sec. 15 AStG, for the fiscal year 1998 the fiscal authorities attributed the foundation's income to the claimant as inheritor of her mother.

The claimant argues that Sec. 15 AStG should not be applicable as (1) the foundation had been established by her mother during her residency abroad and therefore the foundation's estate was not connected with Germany and (2) her mother was deprived of disposing of the foundation's estate after establishing it. The claimant is of the opinion that Sec. 15 AStG infringes the free movement of capital.

In general, the Finance Court acknowledges this reasoning, but sees itself incapable to judge in favour of the claimant due to the grammatical interpretation of Sec. 15 AStG. It therefore dismisses the claim but recognizes the need for clarification by the German Federal Finance Court.

The claimant appealed on a point of law, arguing that the former Sec. 15 AStG infringes the free movement of capital and/or the right of the freedom to move and reside. In addition, the question has been raised whether the amendments of Sec. 15 para. 6 AStG as of 2009, although not applicable for the fiscal year 1998, are compliant with EU law. According to these amendments, an attribution of income of foundations with place or seat in the EEA countries will be waived under the conditions that the founder and the beneficiaries are deprived of the right to dispose of the foundation's estate and an agreement on the mutual assistance is concluded between Germany and the country of the foundation.

-- Gitta Jorewitz and Kay Alexander Schulz, Germany; gitta.jorewitz@web.de

Germany – Lower Court speaks out on competence for claims for refund of withholding tax

On 28 January 2010, in two follow-up decisions to the ECJ 's decision in the case *Gaz de France* (C-247/08) (see EUDTG Newsletter [Issue 2009 – nr. 006](#)) the Lower Finance Court of Cologne rejected the claims for refund of withholding tax of two French corporations in the legal form of an S.A.S.

In its decision the Court did not elaborate on a possible contradiction of the German legislation with EU Law. The Court rejected the claim solely based on the ground that the application was filed with the Central Tax Authority (Bundeszentralamt), which, in the Court's view, was not the competent authority in the case at hand. According to the Court, the competence of the Bundeszentralamt is limited to claims which are based on the application of the Parent-Subsidiary Directive. Since according to the ECJ's decision in *Gaz de France* the S.A.S. did

not fall under the scope of the EU Directive, the competence for a refund would not lie with the Bundeszentralamt.

With reference to a yet possible contradiction of the German legislation with the freedoms, the Court also mentioned that claims for equal treatment of cross border and domestic dividend payments in any case would have to be addressed against the local tax authorities and not against the Bundeszentralamt.

The decision 4 K 4220/03 has been appealed against at the Federal Tax Court. The reference number is I R 25/10.

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Germany – Federal Finance Court decision on former loss-recapture-method

The Federal Finance Court (BFH, I R 23/09) published its decision of 3 February 2010 on the recapture of formerly deducted losses of a permanent establishment (PE).

The claimant, a German resident GmbH, is partner of a Luxembourg partnership which generated losses of about 21.7 m DM in the years 1986 until 1989. In the subsequent years 1990 until 1999, the partnership generated profits of 4.2 m DM. Although profits as well as losses of a PE were tax exempt according to the double tax treaty, the claimant opted for the formerly applicable recapture-method so that losses were deductible in the years in which they occur, but were subject to a subsequent recapture when future profits arise. In the disputed year 1999, the tax authority recaptured 450.000 DM which the claimant appealed against. Due to the fact that a loss-carry-forward in Luxembourg is limited to 5 years so that the losses could not be set-off entirely against future profits, the claimant is of the opinion that a (partly) recapture in Germany is in breach of EU Law.

Referring to the case *Krankenheim* ([C-157/07](#)), which bears several similarities, the BFH decided against the taxpayer once again. The BFH argued that, although the Luxembourg temporal limitation of a loss-carry-forward hinders the deductibility of final losses, it would not be the task of the home State (Germany) to resolve such a disadvantage. In addition, the Court stated that the Luxembourg time restriction would also not constitute an infringement of EU law itself. The BFH did not consider a new referral to the ECJ as it thought the EU law interpretation to be clear.

We would like to point out that, from a German perspective, this case does not deal with the question of considering *final* losses abroad. Due to the former deduction of 21.7 m DM and the subsequent recapture of only 4.2 m DM, the (final) losses of 17.5 m DM of the Luxembourg PE still remain deductible in Germany.

Apart from the loss-recapture-method, it has not been decided yet by the ECJ whether a temporal limitation of a loss-carry forward in the PE state would lead to a final loss in the meaning of the *Marks & Spencer* and *Lidl Belgium* decisions which should then be deductible in the State of residence of the parent company/head quarter.

-- Gitta Jorewitz and Juergen Luedicke, Germany; juergen.luedicke@de.pwc.com

Germany – Case pending with Federal Finance Court regarding write downs/capital losses of participations of loss making subsidiaries abroad

In August 2009, the Lower Finance Court of Düsseldorf rejected the deduction of write downs and capital losses deriving from foreign resident loss making subsidiaries from the tax base of a German parent company. The case is now pending with the Federal Finance Court (BFH, I R 79/09).

The claimant, a German resident corporation, held two 100% shareholdings of an Argentinian and a Portuguese subsidiary. Both subsidiaries were in a loss making position; the Portuguese one was already in liquidation. In 2002, the German parent (1) sold the participation of the Argentinian company, deriving a capital loss, and (2) wrote down the Portuguese participation. According to the German participation exemption rule of Sec. 8b Corporate Income Tax Act (CITA), neither the capital loss nor the write down are deductible from the tax base. The claimant appealed against the tax assessment by referring to the *Mark & Spencer* judgment of the ECJ (C-446/03) and arguing that the non-deductibility is in breach of the freedom of establishment as it leads to the fact that losses of the subsidiaries would be considered neither abroad nor in Germany.

The Lower Finance Court replied very shortly, referring only to the Portuguese subsidiary, that the case at hand would not concern final losses of the subsidiary itself, but only concerns losses of the capitalized participation held by the parent company. As Sec. 8b CITA applies equally to foreign and domestic participations, this treatment would not constitute discrimination.

In our view, the claimant possibly chose the wrong approach by contesting Sec. 8b CITA. With respect to the Portuguese subsidiary - given the losses are final in the meaning of *Marks & Spencer* - the claimant should have applied for a cross-border fiscal unity or a deduction of final losses of the subsidiary itself. Apart from this, losses of an Argentinian subsidiary do not fall under the scope of the freedom of establishment and should not be deductible.

-- Gitta Jorewitz and Juergen Luedicke, Germany; juergen.luedicke@de.pwc.com

Netherlands – Government refusal to refund dividend withholding tax is contrary to EU law, compensation due

On 3 March 2010, the lower court of Breda upheld a claim for compensation which had been filed by a Scottish pension fund in connection with a refusal by the Dutch tax authorities to repay Dutch dividend tax withheld in contravention of EU Law.

Litigant is a Scottish pension fund without legal personality and which was not subject to a tax on profit in Scotland. In 2004, litigant received Dutch dividend which was subject to dividend withholding tax in accordance with the Dutch Dividend Withholding Tax (DWTA) as applied in

2004. Pursuant to Article 10 DWTA (2004 text), withholding tax on distributions to a legal entity resident in the Netherlands and not subject to corporate income taxation, could be repaid to the recipient of the dividend upon request.

Under the text of the DWTA, this option was however not available to the Scottish pension fund. Arguing that this outcome was in breach of EU Law, the Scottish pension fund filed for restitution of the dividend withholding tax in December 2007. In May 2008, this claim was ruled non-admissible by the Dutch tax authorities and so the restitution of the withholding tax was denied. Following an appeal by the Scottish pension fund, the Dutch tax authorities did finally repay the withholding tax to litigant in January 2009.

The main question before the Court became whether litigant is entitled to compensation of lost interest over the period May 2008 – January 2009. The Court considers that such compensation is only due if it can be established that the 2008 decision by the Dutch tax authorities was unlawful.

Although parties agree that Article 10 DWTA is contrary to EU Law, the Dutch tax authorities argue that litigant is *in casu* not entitled to a refund because it has no legal personality. In the view of the Dutch tax authorities, this means that the Scottish pension fund is not objectively comparable with a Dutch resident taxpayer who would be eligible for repayment under Article 10 DWTA.

The Court, however, adopts a different approach and rules that in light of the object and purpose of Article 10 DWTA, the Scottish pension fund can be compared to a Dutch resident pension fund (which would fall within the ambit of Article 10 DWTA). Without considering whether there might be a justification, the Court holds that the refusal to repay the dividend withholding tax constitutes a violation of EU Law and therefore considers the 2008 refusal to be unlawful. For this reason, the Court concludes that litigant is entitled to repayment of the dividend tax withheld.

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Italy – Update on the refund of withholding taxes on outbound dividends

The Italian so-called “Relief Decree” is under discussion in the Italian Parliament. The decree is a law which especially provides for the granting of tax reliefs to specific sectors as a consequence of the financial crisis and provides an opportunity to seek to modify some Italian provisions to bring them into line with EU Law principles.

Based on the ECJ decision in the case *Commission v. Italy* (C-540/07), a member of the Italian Parliament proposed an amendment to the existing law on taxation of outbound dividends (see EUDTG Newsletter [Issue 2010 - nr. 001](#)). Below is a summary of the current Italian tax regime on outbound dividends.

In order to align the taxation of outbound dividends with that applied to Italian companies in receipt of dividend distributions and also to implement the Reasoned Opinion C(2006)2544 of the European Commission, issued on 28 June 2006, the 2008 Budget Law provided a

withholding tax of 1.375% applying to dividends paid to companies and other entities which are:

- subject to a corporate income tax; and
- resident in an EU Member State or in an EEA State included in a White List (to be still adopted by ministerial decree and drafted according the exchange of information criterion).

The new regime applies to dividends paid out of profits accrued from the tax period beginning after 31 December 2007 (see also EUDTG Newsletters [Issue 2008 - nr. 002](#) and [Issue 2009 – nr. 004](#)).

The proposed amendment concerned the application of the reduced withholding tax rate to the previous tax periods as well. As a consequence, the legislative proposal provided for a budget of € 470 million, for the refund of withholding tax unlawfully levied in the past.

Unfortunately, the Italian Parliament rejected the proposed amendment and, consequently, for companies submitting refund claims in Italy it is still necessary to commence litigation in order to obtain the refund. In any case, the existence of the proposed amendment, albeit rejected, could constitute a further strong argument to be used before the Italian Courts.

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Spain – Amendments to the Spanish Non-Resident Income Tax Act

On 2 March 2010, the new Spanish Law 2/2010 which implements certain EU Directives in the field of indirect taxation and amends the Spanish Non-Resident Income Tax Act was published. The most relevant measures from an international tax perspective are as follows:

Deduction of expenses from income obtained by an EU resident

Deduction of expenses from income (not being income from a permanent establishment) derived by a taxpayer resident in an EU Member State (other than Spain) will be allowed when calculating the taxable base. Therefore, the taxpayer will be taxed on a net basis instead of a gross basis. In order to apply that deduction, the taxpayer must prove that the expenses are directly linked to the income obtained in Spain and that they have a direct economic relation with the activity carried out in Spain.

Amendment of the Spanish tax legislation on outbound dividends paid to pension funds or European domiciled collective investment vehicles (UCITS)

Outbound dividends not received through a PE by a pension fund or UCIT resident in an EU Member State (other than Spain) will be exempt from withholding tax. However, in respect of UCITs, the exemption can not lead to a lower taxation than the amount that would have been payable in Spain if the dividends had been received by a UCITS resident in Spain.

Implications of these amendments for “Fokus Bank” claims in Spain

The amended Non-Resident Income Tax Act prescribes the same tax treatment as applied to residents under the Corporate Income Tax Act. Therefore, the exemption provided for pension funds and UCITS applicable as from 1 January 2010 entails the following steps:

1. Withholding tax in Spain will be applied to outbound dividends received by a pension fund or an UCITS resident in an EU Member State;
2. The corresponding official form must be submitted in order to obtain the amount withheld.

The amendments entered into force on 3 March 2010 and apply retroactively from 1 January 2010. Therefore, even though the amendments do not refer to fiscal years preceding 2010 (within the statute of limitation period), they reinforce the arguments to file and submit claims refunds on the ground of violation of EU Law.

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Spain – Spanish Court of Appeal orders refund of unduly withheld dividend tax to 3 Dutch pension funds

The Spanish Audencia Nacional (equivalent to court of appeal) delivered its judgment regarding withholding taxes levied on foreign pension schemes in Spain. Three Dutch resident pension schemes (ABP, PGGM and MN Services) had brought a joint action before the court due to the fact that the dividends distributed to them were subject to a 15% withholding tax, whereas dividends distributed to Spanish resident pension funds are exempt from withholding tax.

The claimants argued that the relevant Spanish tax provisions were discriminatory on the grounds of nationality and violated the free movement of capital (Art. 63 TFEU). Claimants also based their arguments on the primacy of EU Law over national law.

The Audencia Nacional ruled that the tax withheld on the dividends distributed to the Dutch pension funds must be refunded because the tax rules at issue violate the free movement of capital by discriminating against EU pension funds outside Spain. The judgment of the Audencia Nacional, however, is likely to be appealed.

In principle, the judgment only refers to pension funds but the court decision may apply for other investment vehicles such as UCITS as well as that the court refers to amendments to the Spanish Non-Resident Income Tax Act per 3 March 2010. As a result of those amendments dividends distributed to EU pension funds and UCITS are exempt from Spanish dividend withholding tax with retroactive effect to 1 January 2010.

Spain, thus, follows the line of thought established in ECJ cases such as Fokus Bank. EU/EEE pension funds are advised to file protective claims. They may still need to litigate in order to obtain a refund in Spain. Late payment interest will be accrued. See also: EU DTG [Newsalert 2010 – nr 006](#).

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United Kingdom – Compound interest claims - UK Court of Appeal decision in VIC GLO

This appeal involving Test Claimants in the VAT Interest Cars Group Litigation Order (FJ Chalke Ltd, A C Barnes (Wokingham) Ltd) v HMRC concerned the ability of the taxpayers to recover compound interest in relation to certain overpayments of value added tax (VAT) made many years previously. The taxpayers served High Court claims for both 'damages' and 'restitution'. The High Court dismissed the Taxpayers' claims on the basis that they were made outside the statutory time limitation period for bringing such claims. In relation to the 'mistake-based' claim (which has an extended time limit), the High Court held that the mistake giving rise to the overpayments was the mistake as to whether or not the principal VAT was due (the liability mistake) rather than any subsequent mistake (e.g. as to whether compound interest was payable). The Taxpayers had been aware of the liability mistake from the date of the relevant ECJ judgments in the 1990s, and the claim forms were not issued until 2007. The six-year time limit had therefore expired.

Although the Court of Appeal dismissed the taxpayer's appeals in this particular case on the basis that they were time barred, it said that the question of whether compound interest is required under EU Law should be referred to the ECJ where there is an appropriate case in future. The ruling therefore leaves the door open to claims for compound interest (both in relation to direct and indirect taxes) where made within the relevant statutory time limits.

NB The Littlewoods vat compound interest case heard in the UK High Court late April is now to be referred to the ECJ.

-- Peter Cussons and Chloe Paterson, United Kingdom; peter.cussons@uk.pwc.com

United Kingdom – Investment trusts can now invest more than 15% of assets into certain foreign funds

The UK tax authorities (HMRC) have confirmed to PwC a change in HMRC's interpretation of the legislation (previously contained in ICTA 1988 s842, now rewritten in CTA 2010 s1158 - s1165) which relates to the taxation of investment trusts. The issue relates to whether an investment trust can invest more than 15% of its assets in a company resident outside the UK. After seeking definitive legal advice, HMRC has concluded that the legislation is incompatible with EU law (free movement of capital - Article 56 of the EC Treaty (now Article 63 of the Treaty on the Functioning of the EU)). Thus an investment trust can invest more than 15% of its assets in a company resident overseas as long as that company would itself meet all the conditions in s842, apart from the UK listing and the residence rules, and would not be a close company (broadly a company which is controlled by 5 or fewer participators and is not a public company) if UK resident.

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[Back to top](#)

EU DEVELOPMENTS

EU – Proposal for EU Directive on CCCTB may be tabled in early 2011

In the European Commission's annual work programme for 2010, the Common Consolidated Corporate Tax Base (CCCTB) is included as a planned legislative proposal, aimed at making "tax rules simpler, reducing compliance costs and removing tax obstacles which companies currently suffer when they operate cross-border."

CCCTB is fully back on the policy agenda of the Commission, and also of the European Parliament, which seems supportive of CCCTB, although it has no fundamental powers in the direct tax area. The political context seems more favourable for CCCTB at the Council now as well than it has been for a long time, primarily because CCCTB is seen by some in Europe as part of the solution to exit the current economic crisis. The ambitious new EU Tax Commissioner Semeta certainly is keen to take up the issue of the CCCTB in his first years in office, and Commission President Barroso, who is in a much stronger position of power vis-à-vis EU Member State leaders than during his first term in office, and more firmly in charge of EC policy-making from the centre than some of his predecessors, might also see merit in exploring CCCTB further to boost revenue raising within the EU and following former EU Commissioner Monti's key recommendations to him for re-launching the Single Market ([see next item](#)).

It is believed that the Commission's proposal for a Directive on CCCTB could be tabled as soon as early next year, after which it would have to be discussed further at Council level. To increase the chances of success of the Commission proposal it would need to be as simple as possible and be something that can be benchmarked. The European Commission's dormant CCCTB Taskforce has recently been reorganised and reinforced to this effect and would also be looking at the economic impact assessment of the proposal for a Directive. It remains very unlikely, however, that all or almost all of the EU-27 would vote in favour of CCCTB. Yet, under the new Treaty of Lisbon, in place since 2009, an important voting hurdle has been taken away. If at least 9 EU Member State governments wish to go ahead with implementing CCCTB in their jurisdictions, then they can now do so, although the Commission for obvious reasons is not in favour of this route.

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EU – Former EU Tax Commissioner Monti presents recommendations on possible EU-wide tax reforms to re-launch Single Market

On 20 October 2009, Jose Manuel Barroso the president of the European Commission announced he had tasked Mario Monti, president of Bocconi University and EU commissioner for the Internal Market, Financial Services and Tax Policy from 1995 to 1999 and for Competition from 1999 to 2004 with the mission of "preparing a report containing options and recommendations for an initiative to re-launch Europe's Single Market as a key strategic objective of the new Commission". Monti was to conduct this mission under his personal responsibility, but was able to call on the Commission's expertise and support. He has since

held consultations with the European Parliament, several EU Commissioners, Member States and other stakeholders.

On 10 May 2010, the "Monti report" was finally presented to EC President Barroso. No spectacular recommendations were to be expected on direct tax policy, however, as direct tax does not fall within the remit of the EU, although the powers retained by the EU's Member States must be exercised consistently with EU Law. Since he was the EU's Tax Commissioner, Monti has held that full tax harmonisation is neither feasible nor really necessary for building up non-distortive and Single Market oriented tax systems within the EU. Monti issued the following key recommendations on taxation:

- further work on the elimination of tax barriers within the Single Market, modernising e-invoicing rules, updating rules on cross border relief,
- introducing a binding dispute settlement mechanism covering double taxation suffered by individuals and reviewing the savings directive;
- work towards a common definition of the corporate tax bases and move forward with the work of the Code of Conduct Group on Business Taxation;
- reform VAT rules in a single market-friendly way;
- develop the area of environmental taxation in the broader context of tax policy and their impact on growth and employment;
- agree on the establishment, at the initiative of the Commission, of a Tax Policy Group chaired by the Commissioner in charge of taxation and composed of personal representatives of the Member States Finance Ministers as a forum for strategic and comprehensive discussion of tax policy issues.

This recipe of establishing an high-level EU Tax Policy Group is not new but very similar to -if not the same as- the Tax Policy Group which was installed in 1996 by the Council, which was chaired by Mr Monti as EU Tax Commissioner "to ensure a smoothly functioning single market", and which resulted in the 1997 Monti Tax Package. This first EU high-level Tax Policy Group lost momentum under the previous Tax Commissioner Laszlo Kovács, and the new high-level group, if indeed established (or reinvigorated), may prove to be the best bet for progress towards removing important remaining tax obstacles to the Single Market. Click here for the [full report](#).

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EU – New consolidated versions of TEU and TFEU available

On 30 March 2010 the corrected, consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) were published in the [OJ, 2010 C 83](#).

-- Bob van der Made, Netherlands and Brussels; bob.van.der.made@nl.pwc.com

EU – European Commission requests Belgium, Denmark and the Netherlands to change exit tax provisions for companies and closes a case against Sweden

The European Commission has formally requested Belgium, Denmark and the Netherlands to change tax rules which impose an immediate exit tax when companies transfer their seat or assets to another Member State. The Commission considers these provisions to be incompatible with the freedom of establishment. A similar case against Sweden has been closed, since Sweden had complied with the Commission's request.

The Belgian tax law provides for immediate taxation of capital gains in case the fiscal residence of a company is changed to outside Belgium (see more details in the next item below). The Danish tax law provides for immediate taxation of capital gains on assets transferred outside Denmark (Section 7A of the Danish Corporate Tax Act). The Dutch tax law provides for exit taxation of non-incorporated businesses and companies (Dutch Articles 3.60 and 3.61 of the Income tax law 2001 and Articles 15c and 15d of the Corporate tax law 1969).

The Commission's opinion is based on case law of the ECJ and on its Communication on exit taxation ([COM\(2006\)825](#)) of 19 December 2006. Immediate taxation of accrued but unrealised capital gains at the moment of exit is not allowed if there would be no similar taxation in comparable domestic situations. It follows from the case-law that the Member States have to defer the collection of their taxes until the moment of actual realisation of the capital gains.

The Commission has already referred Spain and Portugal to the ECJ for similar exit tax rules.

The request takes the form of a reasoned opinion. If there is no satisfactory reaction to the reasoned opinions within two months, the Commission may decide to refer the case to ECJ.

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EU – European Commission opens public consultation on double taxation problems in the EU

On 27 April 2010, the European Commission launched an online public consultation to ask individuals, companies and tax advisers for information on double taxation problems that they have encountered when operating across borders within the EU. The consultation will run until 30 June 2010.

EU Commissioner for Taxation and Customs Union, Audit and Anti-Fraud, Algirdas Šemeta, said: "Double taxation can deter cross-border activity in the EU and the functioning of the Internal Market. I am determined to tackle this obstacle. This consultation will help us to assess the real scale and financial impact of double taxation for citizens and businesses. I will then work towards finding the most appropriate and effective solutions."

The aim of the public consultation is to identify the nature of the problems that EU taxpayers are facing and the extent to which many individuals and companies are encountering the problem of being taxed on the same income or profits in two or more different Member States.

When individuals and companies move between EU Member States they may become liable to tax in more than one Member State. For example, individuals who cross a border daily to go to work, or move to another country, or receive income or inheritances from another country, may face taxation both in their country of residence and in the other country in which they operate or from which they derive income. Companies which operate in more than one Member State may experience similar problems.

Citizens face difficulties, for example, when two different States impose taxes on the same person for the same profit, income or gain, or when two different taxable persons resident in different States are taxed on the same item.

Accordingly the Commission is wondering how effective existing preventive mechanisms really are, such as double taxation conventions and national tax reliefs, and whether they result in the elimination of double taxation.

The consultation concerns all direct taxes – income taxes, corporate taxes, capital gains taxes, withholding taxes, inheritance taxes and gift taxes. Individual citizens, companies and tax advisers are invited to reply to the consultation by completing a questionnaire: http://ec.europa.eu/taxation_customs/common/consultations/tax/index_en.htm

The Commission is also inviting suggestions on how to effectively and rapidly remedy the double taxation identified.

Following the end of the consultation period, the Commission will publish a summary of all the contributions received. It will also analyse the replies in detail and use them in preparing possible initiatives for EU action in the field of direct taxation.

-- Bob van der Made, Netherlands and Brussels; bob.van.der.made@nl.pwc.com

Belgium – European Commission formally requests Belgium to amend discriminatory exit tax provisions in case of a transfer of fiscal residence of a company to another Member State

According to the articles 208, 209 and 210, 4° of the Belgium Income Tax Code, the transfer of the fiscal residence of a Belgian company outside of Belgium is considered as a deemed liquidation from a Belgian corporate tax point of view. As a consequence, the deemed

liquidation will amongst others give rise to taxation of the hidden reserves and unrealised capital gains.

The European Commission considers such exit tax provision as contrary to the freedom of establishment, as it clearly dissuades Belgian companies from transferring their fiscal residence outside Belgium. In its formal request of 18 March 2010 the Commission therefore requested Belgium to amend this legislation. The Commission moreover refers in this respect to its earlier Communication on exit taxation ([COM\(2006\)825](#)) of 19 December 2006 as well as the judgements of the ECJ in the case *De Lasteyrie du Saillant* ([C-9/02](#), 11 March 2004) and *N* ([C-470/04](#), 7 September 2006), in which the ECJ condemned the taxation of unrealised capital gains following the migration of private individuals to another Member State.

The Commission's request takes the form of a 'reasoned opinion' (second step of infringement procedure foreseen in Article 258 of the Treaty on the Functioning of the EU (TFEU)). If Belgium does not reply satisfactorily to the Reasoned Opinion within two months, the Commission may refer the matter to the ECJ.

-- Olivier Hermand, Patrice Delacroix and Mathieu Protin, Belgium; olivier.hermand@pwc.be

Belgium – European Commission formally requests Belgium to amend its tax provision which requires the appointment of a fiscal representative for foreign operators of securities lending systems

According to article 261 of the BITC, in case of interest payments following securities lending operations, the operator of the securities lending operations is to be considered as the debtor of the Belgian withholding tax. Article 73/7 of the Royal Decree implementing the BITC (hereafter "RD/BITC") specifies that in case of foreign operators of such securities lending systems without any fiscal presence in Belgium, such foreign operators should, prior to their request for recognition, identify a Belgian fiscal representative who will personally commit himself to comply with all needed obligations.

As the European Commission considers such requirement contrary to the freedom to provide services, it has sent Belgium a formal request on 18 March 2010 to amend the given tax provision. In this respect, the Commission also refers to a decision of the ECJ ([C-522/04](#)) regarding a similar requirement provided by the Belgian tax legislation in relation to the annual tax on insurance contracts. In the given case, the ECJ ruled that such requirement was indeed to be considered as disproportionate and therefore precluding the freedom to provide services. Moreover, the ECJ stated that in the case at hand Belgium could make use of the provisions of the EU Mutual Assistance Directive which provides for the exchange of information between Member States.

In its request the Commission not only refers to the possibility to rely on the Mutual Assistance Directive but also states that, as is the case for domestic providers, the Belgian Tax Authorities should in the first instance take the appropriate action to receive the needed information from the foreign operator acting on the Belgian market.

The Commission's request takes the form of a 'reasoned opinion' (second step of infringement procedure foreseen in Article 258 of the Treaty on the Functioning of the EU (TFEU)). If Belgium does not reply satisfactorily to the reasoned opinion within two months the Commission may refer the matter to the ECJ.

-- Olivier Hermand, Patrice Delacroix and Mathieu Protin, Belgium; olivier.hermand@pwc.be

France – European Commission challenges the French discriminatory taxation regime for foreign pension and investment funds

On 18 March 2010, the European Commission formally requested France to change the tax treatment of dividends paid to foreign pension and investment funds, considering that such treatment is discriminatory.

With respect to pension funds, French pension funds ("caisse de retraite") were previously exempt from taxation in France on French source dividends; however for financial years ending on 31 December 2009 and subsequent years, such dividends are subject to corporate income tax at the rate of 15 %. This change in the law aimed at complying with EU law. Foreign pension funds are subject to a 25% withholding tax on French source dividends; in some cases, this withholding tax may be reduced through double tax treaties, which generally provide for a 15% rate.

It should be noted that based on a recent Administrative Supreme Court decision, the French Tax Authorities have issued guidelines (published on 15 January 2010) regarding the requirements for foreign non-profit organisations to obtain a refund of withholding taxes levied in France during financial years 2006, 2007 and 2008 and to obtain a partial refund of withholding taxes as from 1 January 2009. As French "caisses de retraite" are deemed to be non-profit organisations, foreign pension funds that meet the strict criteria stated in the guidelines should be able to claim a reimbursement of withholding taxes.

With respect to investment funds, French investment funds - principally OPCVM - are tax exempt on French source dividends whereas foreign investment funds are subject to a 25% withholding tax, which may be reduced through double tax treaties.

In its press release, the Commission considers the difference of treatment between French and foreign pension and investment funds to infringe the free movement of capital, as set out in the Treaty of the Functioning of the EU (TFEU) and the EEA Agreement.

Surprisingly, the Commission stated that "a withholding tax of 25% is levied on dividends paid to pension and investment funds in other Member States or EEA countries (this rate may be reduced by bilateral tax treaties), but no withholding or other tax is levied on domestic funds." In the light of the amendment in French tax law this statement should be applicable solely to investment funds.

This is good news for investment and pension funds that have claimed the reimbursement of French withholding taxes. Investment funds which have not yet claimed, may consider filing appropriate claims to secure their position.

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Germany – European Commission formally requests Germany to amend its anti-abuse provision concerning the relief of withholding taxes

On 18 March 2010, the Commission published a press release (IP/10/298) stating that it had sent a reasoned opinion (second step of the infringement procedure) to Germany, requesting a change of the anti-treaty and directive shopping provision in sec. 50d para. 3 of the Income Tax Act (ITA). In the Commission's view, the provision is in breach of the free movement of capital and the Parent-Subsidiary Directive, as it does not provide for counter evidence.

Sec. 50d para. 3 ITA excludes a foreign resident company from the relief of withholding taxes pursuant to a Double Tax Treaty or the Parent-Subsidiary Directive, if that company is owned by persons who themselves would not be entitled to such a relief, if they received the income directly and one of the following conditions is fulfilled:

- there are no economic or other relevant reasons to establish the foreign company, or
- the foreign company does not earn more than 10 % of its gross income from own economic activity, or
- the foreign company has no adequate business premises for its activities.

The above conditions are listed as alternatives. So, if just one of the three alternatives is fulfilled, no withholding tax relief is possible. Even if only alternative No. 2 is fulfilled, the foreign company is not given the possibility to prove that it nevertheless conducts a genuine economic activity.

The Commission expressly mentioned in its press release that it does not object to the aim of the anti-abuse measure itself. However, in the Commission's view the provision is disproportionate as it goes beyond what is necessary to attain this objective of preventing tax evasion.

If Germany does not react to the reasoned opinion within two months, the Commission may decide to refer the matter to the ECJ.

-- Gitta Jorewitz and Thomas Brink, Germany; gitta.jorewitz@web.de

Norway – EFTA Surveillance Authority issues formal notice to Norway regarding Norwegian exit tax rules

The EFTA Surveillance Authority (“ESA”) has formally requested Norway to change the tax rules which impose an immediate exit tax when companies transfer their effective management (tax residency) or assets to another Member State, capital gain taxation on shares in companies that change tax residency, etc. ESA is also targeting rules treating SE companies less favourable compared to Norwegian limited companies etc. ESA considers these provisions to be incompatible with the freedom of establishment and in breach of the SE Regulation.

In 2007, Norway introduced new exit tax rules which are applicable if a Norwegian tax resident company transfers the effective management (tax residency) to another country, either by reallocating or by a cross-border merger. The company’s assets and liabilities are regarded as realised for tax purposes (all hidden reserves) and deferred taxation due to gain and loss account rules becomes taxable. The shares in the said company are also regarded as realised for the shareholders in the company. Furthermore, if assets and liabilities are transferred out of the Norwegian tax jurisdiction (e.g. from a Norwegian branch of a foreign company to a foreign head office, etc.) this may also trigger exit taxation.

In addition to subjecting SE companies, etc. to the exit tax rules, the Tax Authorities have issued interpretative statements where SE companies, etc. are treated less favourably compared to Norwegian limited companies, etc. with respect to among others tax free mergers.

ESA concluded that the less favourable tax treatment of cross-border situations should be regarded as restrictions that could not be justified by overriding reasons in the general interest and/or should be regarded as being disproportionate.

The request takes the form of a formal notice. If there is no satisfactory reaction to the reasoned opinion within two months, ESA may decide to refer the case to the EFTA Court. See also: EUDTG [Newsalert 2010 – nr 005](#).

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[Back to top](#)

STATE AID

Cyprus – Parliament enacts The Merchant Shipping (Fees and Taxing Provisions) Law of 2010

On 29 April 2010 the Cyprus Parliament enacted The Merchant Shipping (Fees and Taxing Provisions) Law of 2010. The new Merchant Shipping Law, which applies retroactively from 1 January 2010, extends significantly the scope of the Tonnage Tax (TT) regime and enhances the position of Cyprus as a maritime centre.

The Cypriot maritime industry is one of the largest in the EU and the 10th largest worldwide. Moreover, Cyprus is the biggest third party ship management centre in the EU.

The European Commission considers that the scheme is in line with the European Union's Guidelines on state aid to maritime transport and authorised the scheme until 31 December 2019. It is aimed at supporting the shipping sector in Cyprus and other EU countries with a strong maritime sector, providing incentives for the employment of EU shipmen and registration of vessels in the EU and enhancing the competitiveness of shipowners, charterers and shipmanagers operating in the EU.

Cyprus is the only country in the EU that has an EU approved shipping legislation that:

- provides for the payment of TT on the net tonnage of the vessels, rather than corporation tax on their actual profits, regulated completely by the Department of Merchant Shipping rather than the Tax Authorities;
- grants *total* tax exemption of profits tax and distribution tax at *all* levels;
- allows *mixed* activities (shipping subject to TT and other subject to corporation tax) within a company/group;
- supports an *open* registry;
- allows *split* shipmanagement activities (crewing or technical).

The legislation introduces two new TT schemes applicable to shipowners of non-Cyprus flag vessels and charterers. It also extends the application of the TT regime (and exemption from profits tax) currently enjoyed by shipowners and shipmanagers.

The provisions of the new legislation are analysed in a PwC Cyprus circular which can be obtained at request.

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ABOUT THE EUDTG

The EUDTG is one of PricewaterhouseCoopers' Thought Leadership Initiatives and part of the International Tax Services Network. The EUDTG is a pan-European network of EU tax law experts and provides assistance to organizations, companies and private persons to help them to fully benefit from their rights under EC Law. The activities of the EUDTG include organising tailor-made client conferences and seminars, performing EU tax due diligence on clients' tax positions, assisting clients with their (legal) actions against tax authorities and litigation before local courts and the ECJ. EUDTG client serving teams are in place in all 27 EU Member States, most of the EFTA countries and Switzerland. See the EUDTG website for more information: www.pwc.com/eudirecttax.

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