Council adopts Directive amending Sixth VAT Directive regarding simplification, evasion and avoidance

On 24 July 2006 the Council adopted Directive 2006/69/EC which amends Directive 77/388/EEC as regards certain measures to simplify the procedure for charging value added tax. In addition this amendment assists in countering tax evasion or avoidance, and repealing certain decisions granting derogations.

Certain derogations covering same problems

Under varying terms to individual Member States certain derogations covering similar problems were granted by the Council pursuant Article 27(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 in order to combat tax evasion or avoidance, and repealing certain decisions granting derogations.

VAT

The new measures aim at ensuring clarification of VAT law particular in respect to:

- the place of supply, and therefore taxation, of various types of goods and services
- exemption from VAT of certain goods and services
- the taxable amount for VAT purposes;
- the definition of electronically supplied services
- accounting details for simplified arrangements for the application of VAT by non-EU suppliers of electronic services.

The Member States should have implemented the Directive by 1 January 2008 the latest.

Further information is available under the following links (click to open):

languages: EN DE FR

PERSONAL TAXES

EU Commission aims tax havens in Asia

The European Commission wants to fight tax evasion in Asia. Thus the EU savings directive 2003/48/EC shall be extended to Asian metropolis. The directive was implemented in July 2005 within the EU countries as well as Switzerland, Liechtenstein, Andorra, Monaco and San Marino to establish an automatically information system

on interest payments.

Singapore and Hong Kong

As a first step Singapore and Hong Kong are possible targets. „Hong Kong and Singapore are important financial centers and we have to find solutions to avoid tax evasion and create a level playing field among offshore centers,” Maria Assimakopoulou, spokeswoman for Lazlo Kovacz, underlines.

Unanimous Decision by the Council

On Monday the 25 tax experts from the member states considered the plan to extend the directive, but with no result. The negotiating mandate has to be granted unanimous by the 25 Minister of Finances. But there are some critical voices regarding the effect of the EU Saving Directive. Switzerland for example has transferred only 15 million Euro interest payments to Germany although the actual amount is much higher. This might be because the directive does not include interest payments of equity fund.

All in all banking experts question whether Singapore would agree on implementing the EU savings directive, because the financial location might become less attractive.
Next Steps

The proposal could be forwarded to the Council of Ministers for approval. But as the member states will probably reject it, it will maybe not be put on the agenda.

Further information is available under the following links (click to open):

- General Information DG General Taxation and Customs Union on taxation of savings income

German income tax law

The German Income Tax Law distinguishes between unrestricted income tax liability, residing in Germany, and persons with restricted tax liability, who do not reside in Germany but are taxable there on income received in that State. Mr. Conijn deducted from his taxable income the sum of DEM 1,046, which he had incurred in obtaining tax advice for the purpose of preparing his tax return in Germany. The Finanzamt, relying on the German Income Tax Law EstG 1997, refused this deduction on that expenditure.

ECJ Decision

The ECJ pointed out that Article 52 of the EC Treaty (now, after amendment, Article 43 EC) precludes national legislation which does not allow a person with restricted tax liability to deduct from his taxable income, as special expenditure, the costs incurred by him in obtaining tax advice for the purpose of preparing his tax return, in the same way as a person with unrestricted tax liability.

Further information is available under the following links (click to open):

- Judgement of the Court (Third Chamber) / Case number: C-346/04

Non-deductibility of tax advisory fee for non-resident taxpayers under German rules discriminatory

On 6 July 2006 the European Court of Justice (ECJ) gave its decision in the case of Robert Hans Conijn versus Finanzamt Hamburg-Nord (C-346/04). The question was whether a non-resident taxpayer may deduct his tax advisors fees like a resident taxpayer.

News - ECJ

Advocate General finds German rules limiting deduction of expenses discriminatory

Advocate General (AG) Philippe Léger of the European Court of Justice (ECJ) gave his opinion in the case of Centro Equestre da Leziria
Grande Lada v. Bundesamt der Finanzen.

Background

Centro Equestre is a company established under Portuguese law with its registered seat and central management in Portugal and no permanent establishment in Germany. 11 of the 14 shows were held in Germany, whereas Equestre claimed a refund including expenses such as personnel costs, depreciation of horses, equipment and tax advice. The company calculated 11/14 of the accounted costs as deductible, resulting in an overall loss of EUR 6,476.89. But the German tax administration and Lower Finance Court denied the deduction while arguing that the costs did not have a direct economic connection or the costs with the direct economic connection did not exceed 50%.

Opinion of the General Advocate

Advocate General Léger underlined that the German rules treat residents and non-residents differently, although their situation is comparable. Thus a different treatment is a discrimination against the freedom to provide services.

The ECJ Decision

The ECJ argued that:
1. in general the EC Treaty prohibits selective measures of State aid,
2. the Portuguese decision must have been taken by a regional or local authority which has a political and administrative status separate from the central government,
3. the undertakings in the region must not be offset by aid or subsidies from other regions or central government.

The ECJ finds that the Portuguese measures appear to be selecti-

Further information is available under the following links (click to open):

CEPS: General Information on TAXBEN (Tax/Benefit Systems and growth potential of the EU)
language: EN

Further information is available under the following links (click to open):

European Court of Justice Press Release
The Court dismisses the action brought by Portugal
language: EN DE FR

Events

November 2006

Seminar
EU Financial Services: Recent Initiatives, Remaining Obstacles and Future Opportunities.
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