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CONTENTS

ECJ CASES

Belgium	<u>ECJ referral on burden of proof for deductible payments for the supply of services to non-resident recipients: SIAT SA v. Belgian State case</u>
France	<u>ECJ judgement on free movement of capital: Société Etablissement Rimbaud case</u>
Spain	<u>ECJ ruling on transfer tax on transfer of securities: Inmogolf case</u>

NATIONAL DEVELOPMENTS

Austria	<u>Payroll tax exemption for employees active in plant engineering and construction services breaches Austrian Constitution</u>
Belgium	<u>Administrative circular on municipal charge levied on foreign source movable income payments to Belgian resident individuals without the intervention of a Belgian financial intermediary</u>
Belgium	<u>Brussels court of first instance judgement on Belgian Dividends Received Deduction regime regarding financial fixed assets</u>
Belgium	<u>Supreme Court rejects capitalisation of interest in tax matters</u>
France	<u>French tribunal allows for exceptional procedure for dealing with pending EU pension fund and investment fund claims</u>
Italy	<u>New guidelines for the application of Italian CFC rules</u>
Netherlands	<u>Final decision on Dutch elective taxpayer status regime: Gielen case</u>
Netherlands	<u>Premium paid to German insurer deductible</u>
Poland	<u>Proposed legislation to be introduced to end discrimination against foreign investment and pension funds</u>

Portugal	<u>Case pending before the Supreme Administrative Court regarding Portuguese tax regime on outbound dividends</u>
Portugal	<u>Expected amendment to the tax regime on outbound and inbound dividends</u>
Spain	<u>Spanish Supreme Court rules on action for damages against the State: taxpayers can claim action for damages plus interest in cases of violation of EU Law</u>
United Kingdom	<u>Stamp Duty Reserve Tax: High Court grants the GLO</u>

EU DEVELOPMENTS

EU	<u>European Commission proposes new EU strategy for re-launch of the Single Market and adopts its Work Programme for 2011</u>
EU	<u>European Commission reactivates high-level EU Tax Policy Group</u>
Belgium	<u>European Commission formally asks Belgium to end the discriminatory treatment of non-residents working in the Flemish Region</u>
Czech Rep. & Sweden	<u>European Commission requests Czech Republic and Sweden to end discriminatory treatment of pensions</u>
Germany	<u>European Commission takes second step re fiscal unity</u>
Greece	<u>European Commission requests Greece to remove discriminatory provisions</u>
Netherlands	<u>European Commission requests the Netherlands to change its law on discriminatory taxation of substantial interests held by foreign companies</u>
Switzerland	<u>"Cash instead of Data" - details of final withholding tax by Swiss banks for German & UK clients are being negotiated by government working groups</u>
United Kingdom	<u>European Commission requests the UK to amend its rules regarding Common Law claims</u>

CCCTB

EU	<u>Latest developments on the CCCTB</u>
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STATE AID

Italy	<u>European Commission: in-depth investigation on Italian municipal tax exemption</u>
Italy	<u>European Commission pressure on Italy regarding the recovery of the Italian State aid granted to utilities with a majority public capital holding</u>

ECJ CASES

Belgium – ECJ referral on burden of proof for deductible payments for the supply of services to non-resident recipients: *SIAT SA v. Belgian State* ([C-318/10](#))

According to article 54 of the Belgian income tax code (BITC), payment for supplies or services are not regarded as professional expenses when they are paid or allocated directly or indirectly to a non-resident recipient, which, under the terms of the provisions of the legislation of the country where they are established, are not subject to an income tax or are subject to a notably more advantageous tax regime than the one to which these incomes are subject in Belgium, unless they prove, by any legal means, that such payments relate to genuine and proper transactions and do not exceed the normal limits. In other words, such proof does not need to be provided in case of similar payments by the Belgian taxpayer to a Belgian resident recipient benefiting from an advantageous tax regime or not subject to tax. On 2 July 2010, the Belgian Supreme Court referred the question to the ECJ of whether that different tax treatment discriminates against the freedom to provide services (Article 56 TFEU).

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

France – ECJ judgement on free movement of capital: *Société Etablissement Rimbaud* case ([C-72/09](#))

On 28 October 2010, the ECJ delivered its ruling in *Société Etablissement Rimbaud*, which concerned the French 3% tax due by foreign entities owning real estate in France. In the case at hand, the foreign entity was resident in Liechtenstein which is a party to the EEA Treaty.

The 3% tax is an annual tax assessed on the fair market value of French properties owned directly or indirectly by French and foreign entities. It is intended to be a substitute for French wealth tax (normally due by French and non-French resident individuals owning French properties), when such properties are owned indirectly through an interposed entity (or interposed entities). Foreign entities can however avoid paying the annual 3% tax by either making an annual disclosure regarding the name and location of the ultimate shareholders, or by committing to do so at the request of the French Tax Authorities. This exemption applies if and only if the French tax authorities can verify the accuracy and completeness of the information provided.

In the *Elisa* case ([C-451/05](#)), the ECJ decided that the automatic liability to the 3% tax of a 1929 Luxembourg Holding company was a restriction on the free movement of capital. The ECJ ruled that the restriction was not proportionate even though France was unable to obtain the required information from Luxembourg, whether on the grounds of the EU's Mutual Assistance Directive 77/79/EC regarding exchange of information or on the grounds of the France-Luxembourg DTT. The ECJ took the view that for any interposed EU entity, France would first be required to request proof of accuracy and completeness of information provided from the interposed entity. It is only in the event that the interposed entity fails to provide such evidence, that the 3% tax could then subsequently be validly collected in France.

In the *Rimbaud* case, the entity subject to the 3% tax was not from the EU, but was in fact a Liechtenstein company which invested in French properties. At that time, no exchange of information treaty had been concluded between France and Liechtenstein (this was done later in September 2009 although this treaty is not yet in force). The claimant argued that automatic liability to the 3% tax was actually a restriction of the free movement of capital principle provided for in the EEA Treaty.

The ECJ did not replicate the *Elisa* ruling but instead applied the solution that is relevant for non-EU countries (A. case, [C-101/05](#)), i.e. that when no exchange of information procedures exist, then tax authorities can deny a tax benefit where this is dependent on information that can only be verified through an exchange of information procedure.

This means that for non-EU countries, where an exception to an anti-abuse rule is actually conditional upon certain requirements, one is entitled to deny such benefits if the tax authorities are not in a position to verify the accuracy and completeness of information supplied.

-- Emmanuel Raingeard and Jacques Tacquet, France;

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Spain – ECJ judgement on transfer tax on transfer of securities: *Inmogolf* case ([C-487/09](#))

On 31 December 1997, a company requested the refund of the amount paid corresponding to the transfer tax due on the transfer of a company whose real estate located in Spain represented more than 50% of its total assets. The request for refund was rejected by the Spanish Tax Authorities and subsequently by different Courts. On 24 September 2009, the company submitted an appeal of annulment before the Spanish Supreme Court which referred a preliminary ruling request to the ECJ on 30 November 2009 on the following questions

1. Does Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (now Directive 2008/7/EC) preclude the automatic application of legislation of Member States, such as a transfer tax on transfers of securities which conceal transfers of immovable assets, even if there has been no intention to avoid taxation?

If it is not necessary for there to be an intention to avoid taxation,

2. Does Council Directive 60/335/EEC of 17 July 1969 preclude legislation such as a charge on the acquisition of major shareholdings in companies whose assets comprise mainly immovable property, even though those companies are fully operative and the immovable assets cannot be disassociated from their economic activities?

On 6 October 2010, the ECJ ruled that the Directive does not preclude a Member State from charging duties with the aim of avoiding tax evasion within the framework of transfers of securities. The Spanish domestic provision subjects these transactions to tax on capital transfers, as transfers of assets for consideration, provided that they represent part of the capital of companies in which at least 50% of the assets comprise immovable property and

where the purchaser, as a result of that transfer, obtains a position which enables him to exercise control over the entity. The ECJ ruled that, regarding the Directive, such a tax is allowed even though there is no intention of tax evasion or the company acquired carries on an economic activity and its real estate assets cannot be disassociated from its activity. The ECJ based its decision on (i) the wording of the Directive; (ii) the fact that the Directive does not establish the conditions under which the Member States can request charges of taxes on the transfer of securities; and (iii) the fact that the Directive carried out an exhaustive harmonization of the different situations that Member States could subject to indirect taxes.

-- Miguel Ferre and Antonio Puentes, Spain; miguel.ferre@es.landwellglobal.com

[Back to top](#)

NATIONAL DEVELOPMENTS

Austria – Payroll tax exemption for employees active in plant engineering and construction services breaches Austrian Constitution

Under Austrian income tax law, specified services rendered in connection with plant engineering and construction services are exempted from payroll taxes at the level of the assigned employee provided the salary for these services is paid by an Austrian company in connection with services rendered abroad. This tax exemption aimed to promote export activities. The Austrian Administrative High Court (High Court) is of the opinion that the provision is incompatible with the Austrian Constitution and might also not be in line with EU Law since only domestic companies assigning their employees abroad, enjoy this tax benefit. However, if the Austrian legislator should extend the application of the provision to employees from other EU member states as well as from EEA countries and Switzerland sent abroad, then the regulation would be in line with the free movement of workers (Article 45 TFEU). Nevertheless, the actual aim to promote Austria's exporting economy would then not be achieved since also companies within the EEA and Switzerland enjoy this tax privilege and thus promote their country's export activities. In addition, the interpretation of the perception when services are rendered abroad is of importance since only services rendered outside Austria are exempted, even though the distance to the place of performance might be shorter than the distance for a domestic deployment. According to the High Court, this discrimination was justified due to the fact that the tax exemption aims to promote Austrian exports.

Therefore, the High Court triggers concerns that exactly this reason – the promotion of exports – becomes as justification less important since also companies within EFTA must benefit from the tax exemption due to EU Law. The High Court considers that the privilege in connection with plant engineering and construction services rendered abroad is not in line with the Austrian Constitution nor the free movement of workers. The High Court decided to file an application with the Constitutional High Court to abandon this tax exemption. The latter accepted the request and is of the opinion that the tax exemption for services rendered abroad is not in line with the Austrian Constitution. The Austrian Constitutional High Court decided that this tax privilege cannot be justified anymore since this privilege is only granted to a certain group of employees. The privilege will expire after 31 December 2010.

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Belgium – Administrative circular on municipal charge levied on foreign source movable income payments paid to Belgian resident individuals without the intervention of a Belgian financial intermediary

Belgian individual taxpayers are required to include movable income (interest, dividends, etc.) in their annual taxable income, except for movable income for which withholding tax has already been retained and paid to the Belgian tax authorities, which exception is laid down in Article 313 of the Belgian income tax code (BITC).

In respect of foreign sourced movable income, Belgian withholding tax is only retained if it is paid through a Belgian financial intermediary. Without the intervention of a Belgian financial intermediary, the exemption provided by Article 313 BITC is not applicable and consequently, the foreign sourced income must be included in the taxable income.

According to Article 465 BITC, municipal authorities have the right to levy an additional charge on the individual income tax. This additional charge is only levied on the income tax due according to the annual tax return filed by the individuals, and therefore not on the Belgian withholding tax suffered.

On 1 July 2010, the ECJ held in the *Dijkman* case ([C-233/09](#)) that the above mentioned legislation is in breach of the free movement of capital Article 63, as movable income from investments in other EU Member States that is not paid through an intermediary established in Belgium is subject to a supplementary municipal tax, whereas such income from investments in Belgium, because it is subject to withholding tax at source, is not included in the taxable income and, therefore, not subject to the supplementary municipal tax.

As a result, municipal charges can in practice only be levied when foreign source movable income is paid directly to a Belgian individual taxpayer without the intervention of a Belgian financial intermediary. Put in another way, should the individual taxpayer want to avoid the municipal charge, it is necessary that the foreign movable income is paid through the intervention of a Belgian financial intermediary.

In the Administrative Circular (Ci.RH.331/607.620) dated 19 October 2010, the Belgian Tax Authorities confirm that foreign source movable income paid to a Belgian resident individual without the intervention of a Belgian financial intermediary, will be excluded from the tax base for the calculation of the additional municipal charges. In relation to past assessment years, the Belgian tax authorities state that any requested “ex officio” relief on basis of the decision of the ECJ will be accepted provided all other conditions in relation to this request are complied with. For all pending court cases in this respect, the Belgian tax authorities will adhere to this above mentioned position and will suggest a relief for the said municipal charge.

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

Belgium – Brussels Court of First Instance judgement on Belgian Dividends Received Deduction regime regarding financial fixed assets

In line with the EU's Parent Subsidiary Directive, the Belgian tax legislation provides that a Belgian tax resident company holding can benefit from a deduction equal to 95% of the net dividend received (DRD). In addition to the conditions set under the Parent Subsidiary Directive, the Belgian DRD-regime requires that the dividend was derived from shares that qualify as "financial fixed assets" and that are booked as such at the time the dividend is received.

In its decision of 30 April 2010, the Court of First Instance of Brussels recalls that Member States are not allowed to add additional conditions not provided by the Parent Subsidiary Directive. Therefore, given that the Belgian tax legislation prescribes that the shares must be considered as "financial fixed assets", the Belgian tax law is not in line with the Parent-Subsidiary Directive.

In this respect, it is also interesting to note that the additional condition has also been the subject of a formal request sent by the European Commission to Belgium (IP/09/1770, 20 November 2009)

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Belgium – Supreme Court denies the capitalisation of interest in tax matters

According to Belgian civil law, in the case of an amount due, the interest can under certain conditions be capitalised and as such give rise to additional interest (i.e. interest on interest).

The Belgian Supreme Court considered in its decision of 18 June 2010 that the provision of moratorium interest as laid down in the Belgian tax law is to be considered as a "sui generis" deviation from the civil law regime. Therefore, this capitalization as provided for in civil law is not applicable in case of repayment of income tax. The same should apply in case of repayment of tax due to as a consequence of an established infringement of EU Law.

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

Note: A similar issue is being referred to the ECJ by the UK courts in the John Wilkins VAT case.

France – French tribunal allows for exceptional procedure for dealing with of EU pension fund and investment fund claims

On 22 September 2010, the French Tribunal Administratif suggested an exceptional procedure, considering the large number of "Fokus Bank" claims pending with/rejected by the French tax authorities. This procedure consists in hearing a first "test case" before year-end and the Tribunal will consider if the case meets the conditions for an "Avis to the Conseil d'Etat" to be requested. PwC are actively involved in this exceptional procedure.

The First hearing took place on 19 November 2010 and the selected cases concerned Belgian, German, Spanish and US investment funds. The analysis made by the public rapporteur is

favourable to claimants. Even if this position is not binding, it is likely that the court will follow this analysis and request the "Avis" of the French Supreme Court (Conseil d'Etat). The decision of the Tribunal should be rendered on 3 December 2010. After that, on basis of the "Avis", the Tribunal would then render "serial decisions" i.e. a "Main Case" would be identified for each situation (type of UCITS / UCITS v. non-UCITS / country) for which the Tribunal would make decisions before the end of 2011. The Main Cases would be "duplicated" for all similar funds possibly using a specific proceeding known as "Ordonnance" to speed up the process. In a decision rendered on 22 April 2010, a French Tribunal ruled that withholding taxes levied on French source dividends paid to investment funds established in the EU (Irish UCITS in the case under consideration) are incompatible with the EU's rules on the free movement of capital, and ordered a refund of unduly withheld dividend withholding taxes to investment funds. This decision should be read in the light of the aforementioned infringement proceeding which the EC launched against France regarding the discriminatory treatment of EU collective investment funds in March 2010 which tends to strengthen the argument of the taxpayer. The French tax authorities have lodged an appeal against the decision.

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Italy – New guidelines for the application of Italian CFC rules

On 6 October 2010, the Italian Tax Authorities issued Circular Letter no. 51/E clarifying the application of the Italian Controlled Foreign Corporation (CFC) rules, as amended by the Decree Law no.78 dated 1 July 2009.

The main change introduced by the Decree Law is the application of the Italian CFC rules not only to the companies resident in black-listed countries, but also to the controlled foreign companies resident in states with an ordinary level of taxation if the following conditions simultaneously are met:

- the effective taxation in their State of residence is 50% lower than the Italian taxation they would have been subject to if resident in Italy; and
- their profits are derived as to more than 50% from activities generating the so-called "passive income" or infra-group activities.

As a consequence, the Italian CFC rules could be applicable to any EU company controlled by an Italian stockholder, unless the Italian stockholder, through a preliminary ruling to the Italian Tax Authorities, proves that its controlled foreign company "*is not an artificial arrangement aimed at obtaining an undue tax advantage*".

The Circular Letter clarifies that the comparison between the taxation suffered by the foreign entity in its state of residence and the hypothetical Italian taxation, has to be made with the effective tax rate and not with the nominal domestic tax rate in force. In addition, complex rules are introduced to determine the effective foreign taxation and the hypothetical Italian comparable.

The Italian Tax Authorities, in line with Council Resolution [2010/C 156/01](#) on the coordination of the CFC and thin capitalization rules published on 8 June 2010, describe the

typical features for identifying an artificial arrangement. Moreover, the Circular Letter gives some specific indications on how the non-artificiality of a financial company established abroad can be proved.

Based on the literal text of the law and on the clarifications given by the Italian Tax Authorities, it seems that the Italian CFC rules are in compliance with the principles stated by the ECJ in *Cadbury Schweppes* (C-196/04). However, some doubts on the Italian provision could arise with reference to the principle of proportionality as described in the Commission's Communication COM(2007) 785 of 10 December 2007. In fact, Italian stockholders are obliged to monitor every year whether the two abovementioned conditions for not being subject to the CFC rules are met and, if this is the case, they will have to apply for a preliminary ruling from the Italian Tax Authorities. The costs related thereto may discourage the acquisition or setting up of EU companies by Italian investors. Moreover, with specific reference to the preliminary ruling, it should be pointed out that the burden of proof should not lie solely with the taxpayer, as also stated in the Commission Communication.

-- Claudio Valz and Luca la Pietra, Italy; claudio.valz@it.pwc.com

Netherlands – Final decision on Dutch elective taxpayer status regime: Gielen case

On 20 October 2010, the Dutch Supreme Court rendered its final decision in the case of Gielen (C-440/08).

The key issue in this case is the provision of a tax deduction for self-employed persons to a German resident operating a permanent establishment (PE) in the Netherlands. Under Dutch law, this deduction is only available to entrepreneurs who work for more than 1,225 hours per year for an undertaking in the Netherlands. This test is referred to as the 'hours test'.

The litigant is a German resident who operates a glasshouse horticulture business in Germany. He set up a PE in the Netherlands. In 2001 he worked more than 1,225 hours for that business in Germany, whereas he worked less than 1,225 hours for the Dutch PE. Consequently, he was denied the self-employed person's deduction because he did not meet the 'hours test'.

On 18 March 2010, the ECJ 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 existing under Dutch law for the litigant to be treated as a resident taxpayer. (See also: EUDTG Tax News [Issue 2010 - nr.003](#))

In line with the ECJ's decision, the Dutch Supreme Court has now held that the hours which the litigant has spent for his business in Germany must be taken into account when applying the 'hours test'. This means that the litigant qualifies for the deduction for self-employed persons. The extent of this deduction depends on the level of profit attained by the taxpayer; the lower the profit, the higher the deduction granted. In this context, the Dutch Supreme Court is of the view that the German profit must also be taken into account when calculating the extent of the deduction.

The litigant was represented by PwC in The Netherlands

-- Marius Girolami and Anna Gunn, The Netherlands, anna.gunn@nl.pwc.com

Netherlands – Premium paid to German insurer deductible

On 22 October 2010, the Dutch Supreme Court held that the refusal to allow the deduction of premiums paid by a Dutch resident to a German insurer is contrary to EU-Law.

The litigant is a Dutch resident who has purchased additional disability insurance with a German insurer. The disability insurance provides a profession specific coverage which is not offered by Dutch insurers. For Dutch income tax purposes, the premium paid for this coverage would only be deductible if the German insurer qualifies as an 'authorized provider'.

In order for a foreign insurer to obtain the status of an 'authorized provider', various criteria must be met. In particular, an enforceable security must be provided to the Dutch tax authorities for the event that the premium payment would become taxable at a later stage. This enforceable security can be provided either by the foreign insurer or by the taxpayer. This requirement does not apply to Dutch insurers.

In the case at hand, the German insurer does not have the status of an 'authorized provider'. Consequently, the premium paid by the litigant cannot be deducted for Dutch tax purposes. The litigant challenges this outcome, on the basis that the requirements which the German insurer would need to meet in order to qualify for the status of an 'authorized provider' are contrary to EU Law.

In the view of the Supreme Court, the aforementioned regulation contains elements which may restrict foreign insurers from providing services in the Netherlands and thus leads to a *prima facie* breach of the freedom to provide services under Article 49 EC (now Article 56 TFEU). In the view of the Supreme Court, this restriction cannot be justified either on the grounds of the coherence of the Dutch tax system or by the need to preserve effective fiscal controls. The fact that the German insurer did not apply and receive the status of an 'authorized provider' cannot, lastly, be used as an argument to the detriment of the taxpayer.

-- Marius Girolami and Anna Gunn, The Netherlands, anna.gunn@nl.pwc.com

Poland – Proposed legislation introduced to end discrimination against foreign investment and pension funds

The Polish Sejm (Lower House of the Polish Parliament) has approved draft changes in the law according to which foreign investment and pension funds would benefit from corporate income tax exemptions on income derived from Polish sources. The changes are planned to be introduced as of 1 January 2011. The proposed changes will need to be first approved by the Polish Senate and then by the President.

PwC Poland has managed to obtain several refunds of withholding tax suffered on income of foreign investment and pension funds. In our view, planned changes in the law may

significantly strengthen the arguments for claiming back withholding tax suffered in previous years.

According to the draft legislation, collective investment institutions and entities running pension scheme programs located in the EEA and with which Poland concluded a double tax treaty and containing an exchange of information clause, will benefit from a tax exemption on income derived in Poland provided they:

- are subject to tax in the country of location on their worldwide income;
- run their business activity under a permission of competent authorities;
- are supervised by competent authorities; and have an asset depository.

Additionally:

- in the case of investment institutions – they should be solely engaged in collective investment of funds gathered in public or non-public offers relating to investing in securities, money market instruments and other property rights;
- in the case of pension funds - they should be solely engaged in gathering the funds and investing them in order to pay the funds out to the participants of pension schemes after the participants reach pension age.

Apart from the above – from a formal perspective – the fund should be able to present its tax residency certificate in the country where the fund is located and submit a statement confirming that the fund meets the conditions stipulated above and the fund is the beneficial owner of income derived in Poland.

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Portugal – Case pending before the Supreme Administrative Court regarding Portuguese tax regime on outbound dividends

The Portuguese tax regime on outbound dividends is being challenged before the Supreme Administrative Court of Justice by a Dutch company which derived dividends, in 2006 and 2007, from its Portuguese subsidiary.

The Portuguese tax regime in force between 2001 and 2007 provided for a corporate income tax exemption on dividends received by Portuguese companies from Portuguese subsidiaries. However, this exemption did not apply in the same terms when the dividends were distributed to foreign companies, even if resident within the EU, which were required, for that purpose, to comply with more stringent requirements, namely in terms of ownership percentage (10% domestic and higher percentages in the case of foreign companies) and ownership period (1 year domestic and 2 years for foreign companies).

The same differentiated treatment occurred with respect to a withholding tax exemption on such income, also provided for in the Portuguese legislation. Furthermore, where the exemption from withholding tax did not apply, the applicable rate on dividends paid by a

Portuguese resident entity to its Portuguese parent company was 20%, while if such dividends were paid to a foreign Parent company, the withholding tax rate was 25%.

Based on this differentiated regime for foreign companies, the Dutch company claimed for the refund of the tax withheld in Portugal in 2006 and 2007, on the grounds that the Portuguese legislation in force at the date was in breach of the fundamental principles of EU Law, namely the free movement of capital, as it provided for different treatment of dividends paid to holding companies, depending on whether they were resident or not in Portugal.

A similar case was brought before the Portuguese Supreme Administrative Court in March 2010 by a Spanish company which had received dividends from its Portuguese subsidiary in 2003 and 2004. In such case, the Portuguese Court decided to refer a question for a preliminary ruling to the ECJ inquiring if the Portuguese legislation at hand breaches the principles of non-discrimination, freedom of establishment and free movement of capital (Case [C-199/10](#)).

On 15 September 2010, the Portuguese Supreme Administrative Court, while deciding for the second time on a question about the Portuguese regime on outbound dividends in force during 2001 and 2007, and respective compatibility with EU Law, decided to stay the proceedings until the ECJ issues a decision in Case C-199/10.

-- Leendert Verschoor en Jorge Figueiredo, Portugal; leendert.verschoor@pt.pwc.com

Portugal – Expected amendment to the tax regime on outbound and inbound dividends

The 2011 State Budget Law Proposal, presented by the Government on 15 October 2010, contains measures that amend the current regime of taxation of outbound dividends.

The current Portuguese tax law provides that dividends distributed by Portuguese subsidiaries to Parent companies resident in the EU (including Portugal), or in the European Economic Area (EEA), are exempt from withholding tax provided that the participation is held or maintained for 1 year and corresponds to at least 10% of the sharecapital of the subsidiary or it has an acquisition cost of at least € 20 million.

The 2011 State Budget Law Proposal contains an amendment to the regime in force, by eliminating the alternative of considering the acquisition value of the shares. In accordance, withholding tax at the rate of 21.5% will now be levied on dividends paid by Portuguese subsidiaries to EU (including Portuguese) or EEA Parent companies, in all situations where the shareholding represents less than 10% of the share capital, regardless of its acquisition value.

Similar to the provisions applicable in case of inbound dividends, in the current Portuguese tax law a tax relief of 100% (50% in certain cases) is provided for in case of dividends received by Portuguese Parent companies, and paid by EU (including Portugal) or EEA subsidiaries. The provision applies where the participation in the subsidiary is held or maintained for 1 year and corresponds to at least 10% of the sharecapital of the subsidiary or it has an acquisition

cost of at least € 20 million. Where the referred requirements were not met, the relief was 50%.

The 2011 State Budget Law Proposal contains an amendment to the regime in force, by eliminating the alternative of considering the acquisition value of the shares. In accordance, the mechanism of eliminating the economic double taxation will no longer apply where the shareholding represents less than 10% of the share capital of the subsidiary, regardless of its acquisition value. Following the elimination of the 50% relief, full taxation will arise.

-- Leendert Verschoor and Jorge Figueiredo; Portugal; leendert.verschoor@pt.pwc.com

Spain – Spanish Supreme Court rules on action for damages against the State: taxpayers can claim action for damages plus interest in cases of violation of EU Law

On 17 September 2010, the Spanish Supreme Court ruled (published on 11 October 2010) that taxpayers can claim action for damages and the corresponding late payment interest in cases of violation of EU Law within the established one year domestic time frame. In the case at hand, on 30 March 2010, the relevant company claimed action for damages against the State based on the incorrect transposition of Directive 77/388/EEC.

On 26 January 2010, the ECJ concluded in *the Transportes Urbanos y Servicios Generales* case ([C-118/08](#)) that EU Law precludes a national rule such as the Spanish rule which allows actions for damages against the State alleging breach of its law established by a judgment of the ECJ only if all domestic remedies for challenging the validity of the relevant law provision have been exhausted by the applicant, when such a rule does not apply to actions for damages against the State alleging breach of the Constitution by national legislation established by the competent national court. Therefore, a taxpayer may use the procedural rules for unconstitutional legislation when they bring an action for damages against the State based on legislation violating EU Law.

The ECJ judgment effectively meant that taxpayers, both residents and non-residents, may successfully claim a refund for taxes which have been paid in violation of EU Law within the time frame and limitations set by domestic law which governs the Administration's liability.

This judgment clearly reinforces the possibilities of success in actions for damages against the State alleging breach of EU Law. It is important to note that regarding the new judgment it is possible to claim refunds in cases related to unlawfully paid taxes which are tax barred. In this regard we would like to highlight certain scenarios to identify possible claims:

- Non-resident legal persons but residents in an EU Member State who have been subject to taxation on capital gains that were triggered at a tax rate of 35%. As recognized by a judgment dated 6 October 2009 (published on 21 November 2009), the difference between said 35% and the 15% or 18% applicable to residents in Spain could be claimed for refund (Case C-562/07). The time frame to submit action for damages would finish next 21 November 2010. Non-resident legal entities but residents in a EU Member State who have been subject to taxation on the dividends

paid by Spanish entities in which the non-resident has a shareholding greater than 5% but lower than the thresholds required by the Parent-Subsidiary Directive.

- Cases where the Parent-Subsidiary Directive is not applicable because of not being resident in an EU Member State but where the claimant is resident in the EEA territory could also be claimed. This issue arises as a result of a judgment dated 3 June 2010 (published 31 July 2010) related to case C-487/08 and, therefore, the time frame to submit an action for damages would end on 31 July 2011.

We would also like to point out that there are other EU issues that are currently being litigated and these will be communicated once the relevant judgments are issued.

-- Miguel Ferre and Antonio Puentes, Spain; miguel.ferre@es.landwellglobal.com

United Kingdom – Stamp Duty Reserve Tax: High Court grants the GLO

On 27 October 2010, PwC Legal in the UK was granted the right to lead a group litigation order (GLO) for those companies that have made (or are yet to make) reclaims of 1.5% stamp duty or stamp duty reserve tax (SDRT) paid in connection with cross-border mergers, overseas capital raisings (often requiring a secondary listing) and share option schemes for overseas employees. The GLO was granted to make the process of managing claims easier (both for the court and for claimants) by having a way to bring claims together behind a limited number of test cases, rather than having to deal with each claim individually. This is the first GLO that PwC Legal will have led since PwC initiated the direct tax GLOs in 2002/03.

The GLO means that clients can make claims more cost-effectively.

The stamp taxes team has already secured reclaim work for around 15 listed (or formerly listed) clients who have substantial claims and who will be part of the group, and is working to secure further engagements from clients wishing to make a High Court claim and who will have to join this group. It is estimated that HMRC could face £0.5bn to £1bn of reclaims for SDRT paid.

The ECJ found that the UK's 1.5% SDRT 'season ticket' charge on issuing shares into a European-based clearance service (used when shares are traded on a foreign stock exchange) was contrary to EU law. PwC (supported by leading counsel) considers that the charge is also unlawful in the context of shares issued to a non-EU based system, such as US ADR systems.

This will affect UK companies which have issued new shares into a clearance service (e.g. Euroclear or Clearstream); issued shares to a US depository bank (e.g. as part of an issue of ADRs to the US market); and investors or traders who have transferred existing shares to a clearance service or a depository bank.

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[Back to top](#)

EU DEVELOPMENTS

EU – European Commission proposes new EU strategy for re-launch of the Single Market and adopts its Work Programme for 2011

On 27 October 2010, the European Commission finally adopted its comprehensive strategic policy paper (Communication) for a proposed “re-launch” of Europe’s Single Market: “Towards a Single Market Act: For a highly competitive social market economy - 50 proposals for improving our work, business and exchanges with one another” ([COM\(2010\) 608 final](#)). The paper is the Commission’s belated response to the Monti report which was presented to EC President Barroso in May 2010 and which was named after former EU Commissioner Mario Monti. The Monti report contained recommendations for re-launching Europe’s Single Market as a key strategic objective of the Commission. In the domain of (direct) taxation, a remaining symbol of state sovereignty within Europe’s common market, the Monti report called for the elimination of remaining cross-border tax barriers, binding dispute settlement rules for double taxation, a review of the EU’s Savings Directive, work towards a common definition of the corporate tax base and a move forward with the work of the Code of Conduct Group on Business Taxation, as well as revamping the high-level EU Tax Policy Group.

Amongst many other things, the Commission proposes to create “a business-friendly legal and fiscal environment. The measures proposed in this sector envisage, inter alia, a reduction of the administrative and regulatory burden, with positive consequences for growth and job creation. Very practical initiatives will be taken to ensure the linking of company registers and the mutual recognition of e-identification and e-authentication in the European Union. Taxation issues are also crucial. Initiatives relating to the corporate tax base or to VAT will be designed to limit the administrative burden on businesses and to promote cross-border activity.”

Proposal No 19 of the “Single Market Act” deals with steps to improve the coordination of national tax policies, notably by proposing a Directive introducing a common consolidated corporate tax base (CCCTB) in 2011. The Commission explains that the introduction of a CCCTB is intended to tackle fiscal impediments to growth: “Groups of businesses would have to apply a single set of tax rules and deal with only one tax administration across the EU (one-stop-shop). Accordingly, revenues would be consolidated at the group level and profits would be set off against losses without any border barriers. Furthermore, there would be no intra-group transfer pricing compliance obligations (i.e. transaction-by-transaction adjustment of pricing between associated companies). Double taxation or double non-taxation as a result of the current disparities or mismatches among national tax rules would also be eliminated intra-group. Uncoordinated national action would continue to replicate the current situation in that companies would still need to apply as many tax systems as Member States in which they operate. The initiatives to be put forward by the Commission will not have the objective of harmonising corporate tax rates.”

On 27 October 2010, the Commission also adopted its official Work Programme for 2011, in which CCCTB has been marked as one of the Commission’s flagship initiatives.

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EU – European Commission reactivates high-level EU Tax Policy Group

Following the recommendation in the Monti report, the EU Tax Commissioner has revamped the high-level European Tax Policy Group (TPG). The TPG was a political forum for high-level strategic discussions on tax policy composed of personal representatives of EU member state finance ministers and members of the European Commission. This group was first established in 1996 by Commissioner Monti, then EU Tax Commissioner but the group became dormant under Commissioner Kovács, his successor.

EU Tax Commissioner Semeta announced the (re-)launch of the TPG on 12 October 2010 and called it one of his top priorities. The main idea behind the group is to allow the Commission to regularly exchange views with Member State governments outside the official EU institutional architecture on tax proposals and before they are put on the table, and to maintain momentum on important taxation dossiers.

TPG will also discuss in particular what Semeta has for the first time outlined as his three tax priority matters: financial sector taxation, the CCCTB and the new VAT Strategy. At its first meeting held on 12 October 2010, the TPG discussed Monti's recommendations on corporate tax, consumption taxes and environmental taxation, how tax policy coordination could better contribute to fiscal consolidation and improve the effectiveness of national strategies. At the specific request of the ECOFIN Council at the end of September, the TPG also focused on financial sector taxation. *Is it likely to just be a talking shop?* This will in large part be dependent on the personal authority and chairmanship of the new Commissioner. Monti turned out to be a strong chairman at the time who was able to convince the Member States and fellow-Commissioners to adopt the Tax Package in 1997. The TPG is composed of personal representatives of and nominated by the Member States' Finance Ministers. No minutes are made of these meetings, which are taking place outside the EU institutional framework and which remain shrouded in secrecy.

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Belgium – European Commission formally asks Belgium to end the discriminatory treatment of non-residents working in the Flemish Region

Under Belgian legislation, a flat-rate tax reduction is granted to residents of the Flemish Region. By contrast, this reduction is not granted to persons resident in another Member State, even if they work in the Flemish Region and earn all or virtually all of their income there. Reserving the reduction only for residents of the Flemish Region, whatever their nationality, constitutes discrimination against non-residents. The European Commission announced on 28 October 2010 that it considers that Belgium has not fulfilled its obligations deriving from the TFEU, particularly as regards free movement of workers and freedom of establishment (Articles 45 and 49 TFEU), by restricting the application of this flat-rate tax reduction only to workers resident in the Flemish Region. The Commission's request takes the form of a "reasoned opinion" (second step of infringement procedure under Article 258 TFEU). If Belgium does not reply satisfactorily within two months, the Commission may refer Belgium to the ECJ.

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Czech Republic and Sweden – European Commission requests Czech Republic and Sweden to end discriminatory treatment of pensions

On 28 October 2010, the European Commission formally requested the Czech Republic and Sweden to amend discriminatory provisions with regard to the taxation of pensions. The discriminatory regimes in question relates to the more favourable tax treatment that domestic pension insurance schemes receive compared to similar foreign schemes in the Czech Republic, and the discrimination against non-resident pension funds compared to domestic funds when it comes to taxing dividends in Sweden. The requests take the form of 'reasoned opinions' (second stage of an infringement proceeding). In the absence of satisfactory responses within two months, the Commission may refer these Member States to the ECJ.

Czech Republic: contribution to insurance pension schemes

Czech law provides more favourable tax treatment for domestic pension insurance schemes than for foreign insurance schemes. This limits Czech taxpayers' freedom to choose foreign insurance schemes over domestic ones, regardless of the merit of each pension scheme in question. Under Czech legislation, taxpayers can deduct their pension insurance contributions from their income tax base if contributions are paid to a pension fund established in the Czech Republic. In addition, if an employer, on behalf of its employees, pays into a pension insurance fund established in the Czech Republic, these contributions do not need to be included in the taxpayers' income tax base. In contrast, similar contributions paid to a foreign pension scheme are not deductible if paid by the taxpayer and are considered as taxable income if paid by the employer. The Commission considers that this regime is contrary the free movement of workers (Article 45 TFEU), to the freedom of establishment (Article 49 TFEU) and to the freedom to provide services (Article 56 TFEU).

Sweden: taxation of dividends paid to pension funds

In Sweden, dividends paid to non-resident pension funds are subject to a withholding tax of 15% or 30%, depending on whether Sweden has a double tax treaty with the country of establishment of the pension fund. Pension funds established in Sweden, however, are exempt from tax on dividends as well as from corporation tax. They are subject to a 15% tax based on a notional calculation of its profits. As a result of this system, the effective tax rate on Swedish-sourced dividends received by resident pension funds will in most cases be lower than the 15% tax on the gross dividend of non-resident pension funds. The Commission considers this to discriminate against non-resident pension funds and to be contrary to the free movement of capital laid down in Article 63 TFEU.

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Germany – European Commission takes second step regarding fiscal unity

As reported in our EUDTG [Newsflash 2009 – 017](#), the European Commission started an infringement procedure in May 2009 against Germany with respect to the fiscal unity regime. According to Sec. 14 CITA, a subsidiary can form part of a German fiscal unity (Organschaft) with its German resident parent when it has both its seat as well as its place of effective management in Germany (double linked condition). Thus, it is impossible to constitute an Organschaft when the subsidiary was founded abroad and has only its place of effective management in Germany, although the subsidiary is then fully liable to German tax. As

Germany has not replied satisfactorily to the first step, the Commission announced on 1 October 2010 that it will formally request a change of legislation. If Germany does not react within a reasonable time frame, the Commission might refer the case to the ECJ. The Commission's case reference number is 2008/4909.

Please note: This infringement procedure does not deal with the question of whether or not EU law provides for a cross-border fiscal unity, but only with the question of when a domestic fiscal unity can be set up. However, there are currently two decisions pending with the German Federal Fiscal Court seeking clarification as to whether or not a further requirement for the Organschaft, namely the conclusion of a profit and loss pooling agreement between parent and subsidiary, has to be read down for EU Law purposes in case of final losses. Possibly, it might be sufficient to conclude in advance a loss absorption agreement.

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Greece – European Commission requests Greece to remove discriminatory provisions

On 1 October 2010, the European Commission announced it will send a formal request to Greece regarding Greek rules on withholding taxes on outbound dividends. Greece applies a withholding tax of 10% on dividends paid by Greek subsidiaries to a Swiss parent. The European Commission considers that Greece does not respect its obligations under the "Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those of the [Council Directive 2003/48/EC](#) on taxation of Savings income in the form of interest payments". According to this agreement, dividends paid by subsidiary companies to parent companies shall not be subject to taxation in the source State. In this case the Commission acts to ensure that Greece respects EU Law and in particular the agreement between the EU and Switzerland.

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Netherlands – European Commission requests the Netherlands to change its law on discriminatory taxation of substantial interests held by foreign companies

The European Commission has formally requested the Netherlands to change a tax rule that taxes income from substantial interests not forming part of the business capital of companies established elsewhere in EU, respectively in the EEA/EFTA States, whereas income from substantial interests held by domestic companies is exempt, regardless of whether it forms part of their business capital. The Commission considers this rule contrary to the freedom of establishment, to the freedom of movement of capital and to the Parent-Subsidiary Directive.

On the basis of Article 17, paragraph 3, part b of the Law on the Corporation tax 1969 ("Wet Vpb 1969") foreign parent companies are taxable on their substantial interests in Dutch companies, in so far as these substantial interests do not form part of their "business capital". For domestic parent companies there is no condition that the participation is part of their business capital. On the basis of Article 2(5) of the Wet Vpb 1969 all their assets are deemed to form part of their business capital. The Commission considers this difference in treatment a discrimination in the sense of Article 63 TFEU, and in case of controlling participations of

Article 49 TFEU. Moreover, the Dutch legislation is contrary to the Parent Subsidiary Directive (90/435/EEC), since this Directive does not provide for a "business capital" test. Similarly, for companies resident in Norway, Iceland and Liechtenstein the equivalent articles of the EEA Agreement are applicable. The Commission is aware that the State Secretary of Finance has informed the Dutch Parliament that Article 17 of the Wet VpB 1969 will not be applied if the Parent-Subsidiary Directive is applicable, except in cases of abuse or fraud, but such information of Parliament without changing the law is not sufficient to implement a Directive.

If there is no satisfactory reaction to the Commission's reasoned opinion within two months, the Commission may decide to refer the matter to the ECJ.

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Switzerland – "Cash instead of Data" - details of final withholding tax by Swiss banks for German & UK clients are being negotiated by government working groups

In October 2010, Switzerland signed joint declarations on the initiation of negotiations with the United Kingdom (25 October 2010) and Germany (27 October 2010). The negotiations relate to the expansion of cross-border cooperation in tax matters and improved market access for Swiss banks. By signing, Switzerland reaffirmed the willingness to further intensify cooperation in financial and tax matters and to strengthen long-term legal security for market participants. The negotiations are expected to begin early 2011 and will be based on the results of exploratory talks conducted already by government working groups.

Both sides want to agree on a new solution which would ensure that distortions to competition in terms of tax issues are avoided. German and UK taxpayers should not be deterred from holding a bank account in Switzerland. In future, however, the possible risk of tax evasion should not impact on the investment decisions of respective taxpayers. Both sides consider accordingly a solution which respects the protection of bank client privacy on the one hand but also guarantees the implementation of justified tax claims. Consequently, the automatic exchange of information should no longer be an issue in relations between the involved states.

The solution, the details of which are to be clarified during the negotiations, covers the following points in particular:

- *Regularization of the past:* Untaxed existing assets should be regularized with the help of Swiss banks comparable to the Liechtenstein Disclosure Facility model between the UK and Liechtenstein. It is expected that the taxation will be based on actual income or on estimated flat income at a composite rate of approx. 40% (including a penalty).
- *Final withholding tax for the future:* The final withholding tax will be applied by Swiss banks on income earned by non-residents from Swiss Bank accounts. A rate for the new tax will be part of the final negotiations set to begin following the issuances of parliamentary mandates for each government's participation. The final withholding tax is a tax at source, exhausting the respective tax obligation towards the country of domicile. To ensure compliance with the new tax, the Swiss government has agreed to expand the availability of administrative assistance in accordance with the OECD standard. This

envisages the respective authorities making requests using the name of the client without being required to include the name of the financial institution. The number of requests that can be submitted is limited and must be well founded. Fishing expeditions are not permissible.

- *Further elements:* The involved parties intend to tackle the issue of market access for Swiss financial institutions in Germany. There the package also includes measures to decriminalize banks and their staff.

The discussions on a final withholding tax have to be seen in the context of the planned revision of the EU Savings Directive and the EU approach to an automatic information exchange. Member States may negotiate tax treaties with third countries provided that the treaties are in line with EU Law (this includes the EU Savings Directive and EU Savings Tax Agreement with Switzerland). Under the EU Savings Tax Agreement, interest payments of EU citizens are subject to 20% tax withheld by Swiss banks, the rate being increased to 35% by mid 2011 which means that for interest payments the withholding tax rate to be agreed by Germany and UK with Switzerland may not go below this rate. The states involved are however basically free to negotiate with respect to capital gains, dividend payments or other income.

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United Kingdom – European Commission requests the UK to amend its rules regarding Common Law claims

On 30 September 2010, the Commission issued a Press Release requesting the UK to amend its rules regarding the introduction of effectively a maximum 6 year time limit (as a consequence of s107 FA 2007) for common law claims for the repayment of taxes under the care and management of the Commissioners of Inland Revenue.

S107 FA 2007 was one of two pieces of legislation (the other being section 320 FA 2004) which were introduced by HMRC (with retrospective effect) to seek to prevent the decision of the Courts in *Deutsche Morgan Grenfell (DMG)* from applying to common law claims against HMRC. DMG had determined that for claims made on the basis of mistake of law, the start of the 6 year limitation period could be postponed until the discovery of the mistake or when the mistake could have been discovered with reasonable diligence.

This section was enacted to block High Court claims begun before 8 September 2003, unless such claims benefited from a favorable judgment of the House of Lords given before 6 December 2006.

The significance of the Commission infringement proceedings is that it suggests that the parallel and much wider earlier s320 FA 2004 blocking provision iro common law claims made on or after 8 September 2003 is also now more likely to be found to be in contravention of the M&S Teacakes case ([C-62/00](#)) principle that such measures are only lawful if an adequate prospective transitional period is given.

This is of particular relevance to the FII GLO case, for which leave to appeal to the Supreme Court is currently pending, including on the limitation issues such as s107 FA 2007 and s320 FA 2004. NB: leave to appeal on these issues was granted 8 November 2010.

From 1 April 2010, it is no longer possible to make a common law mistake claim for direct tax. Although a year's notice was given, if ultimately the UK courts and/or the ECJ hold that compound interest is an essential element of a full San Giorgio remedy of an unjustifiable breach of EU law, and such interest cannot be read down into the statutory simple interest regime, then the blocking of common law mistake claims and therefore of compound interest may itself be unlawful.

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[Back to top](#)

CCCTB

EU – Latest developments on the CCCTB

The European Commission organised an all-day Workshop on 20 October 2010 with businesses, tax administrations, think tanks and tax law academics in Brussels. The purpose of the meeting was to take stock of progress since the Commission's last CCCTB Working Group meeting which was held in April 2008. The workshop agenda included the following topics:

- Eligibility Tests for Companies and Definition for a CCCTB Group;
- Business Reorganisations in the CCCTB;
- Transactions and Dealings between the Group and Entities outside the Group; and
- Anti-Abuse Rules in the CCCTB.

Workshop chairman Philip Kermode (EC Tax Director) stressed that the Commission is looking for pragmatic solutions for the CCCTB. For any serious progress to be made on the CCCTB, a formal Commission Proposal for a Directive will need to be put to the Member States, which, he said, is normally foreseen for the first quarter of 2011. The Commission is still fine-tuning its proposal. The adoption of a comprehensive CCCTB impact assessment is scheduled for internal adoption by the Commission either on 15 December 2010 or 15 January 2011. In parallel, the Commission has formally started the internal procedure for a CCCTB legislative proposal, including the issuance of the Commission's CCCTB Roadmap:

http://ec.europa.eu/governance/impact/planned_ia/docs/2008_taxud_001_ccctb_en.pdf

See also the article on the new Single Market Act in this newsletter: [click here](#)

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[Back to top](#)

STATE AID

Italy – European Commission starts in-depth investigation on Italian municipal tax exemption

On 12 October 2010, the European Commission announced the opening of an in-depth investigation in order to establish whether the municipal tax exemption, granted by Italy, constitutes illegal State aid.

The Italian municipal tax (so called ICI “*Imposta comunale sugli immobili*”) is generally due by the owners of real estate properties situated in the Italian territory. Section 7, paragraph 1, of the Legislative Decree no. 504/92 provides for an exemption of the municipal tax to real estate used by non-commercial entities for activities such as social assistance, welfare, health, cultural, educational, recreational, accommodation, sport, religious and cult activities. On the basis of the section 149, paragraph 1, of the Italian Tax Code (TUIR) the status of non-commercial entity can be lost where, during a fiscal year, the entity mainly carries on commercial activities. Nevertheless, the same section 149 at the paragraph 4, provides that ecclesiastical institutions and amateur sports clubs cannot lose their status of non commercial entities, independently of the activities actually exercised by the latter. As a consequence, ecclesiastical and amateur sport institutions can benefit from the municipal tax exemption also when they carry on exclusively commercial activities.

In the view of the Commission, the Italian provisions could grant a selective advantage to non-commercial entities carrying on commercial activities as compared with commercial service providers carrying on the same activities. Therefore, for the Commission the aforementioned advantage could constitute State aid in the meaning of article 107 TFEU.

The opening of an in-depth investigation, by the Commission, is probably a consequence of the appeals to the CFI made by some Italian applicants (*Pietro Ferracci* T-192/10 and *Scuola elementare Maria Montessori* T-193/10). In fact, during the year 2006, the mentioned applicants submitted complaints to the Commission to inform the latter about the advantage granted by the Italian provisions to ecclesiastic and amateur sport institutions. On 15 February 2010, the Commission sent a letter to the applicants in which it rejected their complaints. The appeals made to the CFI have been brought against the Commission decision in which the complaints were dismissed.

Finally, it is necessary to clarify that the announcement of the Commission to open an in-depth investigation also concerns the Italian provisions on the 50% reduction of the corporate income tax for entities having as their scope social assistance, research on not-for-profit basis, charity and education and for foundations and associations having exclusively a cultural scope and to social housing entities.

In conclusion it is necessary to point out that the special treatment for such entities existed before the entry into force of the EU Treaty. As a consequence, on the basis of the existing aid procedure, if the measure will be ruled as illegal, by the Commission, no recovery will be possible. In this case, in fact, the only effect will be a change to the Italian law.

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Italy – European Commission pressure on Italy regarding the recovery of the Italian State aid granted to utilities with a majority public capital holding

On 28 October 2010, the European Commission requested the ECJ to apply penalties to Italy because it has not already recovered illegal State aid granted to Italian utilities with a majority public capital holding.

The State aid granted to such companies arose in the Nineties when the Italian legislator adopted a tax break law if public services started to be rendered via legal bodies available to municipalities in order to provide utilities services. The main tax advantage for joint-stock companies with a majority public capital holding was a corporate income tax exemption for three years after their incorporation (for more information please refer to EUDTG Newsletter 2009 – nr. 001, EUDTG Newsletter 2009 – nr. 002 and EUDTG Newsletter 2009 – nr. 004).

On 5 June 2002, The Commission issued Decision no. 2003/193/EC stating that the above-mentioned three years tax exemption constituted an illegal State aid under the meaning of Article 87 of the EC Treaty (now, Article 107 of the TFEU), and, consequently, that the latter had to be recovered by Italy.

In 2005, the Italian legislator adopted a law to recover the illegal State aid establishing that the beneficiaries had to file the tax returns relevant to the years for which they benefited from the corporate income taxes exemption. Nevertheless, the Commission did not consider as appropriate the procedures enacted by Italy and then made a referral to the ECJ.

On 1 June 2006, the ECJ (case C-207/05) declared the failure of the recovery procedure adopted by the Italian Republic based on the fact that Italy did not recover the aid within the period prescribed by the Commission. Subsequently, as the aid had not been recovered after the ECJ decision, the Commission opened a new infringement procedure (2006/2456). As a consequence, in 2007 and in 2008, Italy adopted several laws to quickly recover the State aid.

Notwithstanding the above, the Italian State partially failed to recover the aid and, on 28 October 2010, the Commission requested the ECJ to apply penalties to Italy for an amount equal to 7.140 Euro per-day (from 1 June 2006, the date of the ECJ decision in Case C-207/05 to the date of the new ECJ judgment). Moreover, the Commission also requested that, if the Italy will not realize the full recovery, the penalty should be equal to 65.280 Euro per-day (from the date of the new ECJ judgment to the date of the full recovery).

In the meantime, the Italian Government has announced that most of the aid has been already recovered and that the situation will be quickly resolved.

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ABOUT PwC's EU DIRECT TAX GROUP (EUDTG)

The EUDTG is one of PwC's 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 EU 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.

For further information regarding the contents of this newsletter or the EUDTG in general, please contact the EUDTG Secretariat through Bob van der Made (email: bob.van.der.made@nl.pwc.com; or Tel.: + 31 6 130 96 2 96).

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