

# EU Tax News

 **ERNST & YOUNG**

*Quality In Everything We Do*

A bi-monthly review of  
EU taxation developments  
affecting business in Europe

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## Editorial

As a new year begins, we would like to wish our readers a successful 2008. Slovenia's Presidency of the European Council, beginning in January, will give priority to ratification of the new EU Treaty signed in December, the so-called "Lisbon Strategy" for economic growth and climate/energy policy. In tax matters, Slovenia will seek to increase transparency and simplicity, and reduce administrative and compliance costs. Work will also continue on the VAT directive for financial and insurance services. In addition, the Presidency will further the strategic debate on non-standard VAT rates. Focus will also be on a revised horizontal directive on excise duties and the fight against tax fraud.

The current Newsletter presents some important VAT developments following the meeting of EU Finance Ministers (ECOFIN) that took place in December 2007, especially in the field of VAT derogations and the combat of fraud.

In the Direct Tax news section, we address, among other issues, the European Court of Justice (ECJ) rulings on Finnish transfer tax on shares and the *Columbus Container* case in Germany.

*Matthias Roche*

## Major Developments

### Combating Tax Avoidance and Abuse

*The European Commission has called for an urgent review of anti-abuse measures and closer co-ordination between the tax authorities of different Member States.*

The existing anti-abuse rules devised by Member States often do not properly take into consideration the freedoms of the EC Treaty and are, therefore, increasingly challenged in the ECJ. This situation needs urgent action, according to Taxation and Customs Commissioner László Kovács. While recognising that Member States need to ensure that their tax bases are not unduly eroded because of abusive and overtly aggressive tax planning schemes, Kovács says "we cannot tolerate disproportionate obstacles to cross-border activity within the EU".

Though tax harmonisation is a highly controversial issue, the Commission wants to strike a proper balance between the public interest of combating abuse and the need to avoid disproportionate restrictions on cross-border activity. Also urgently needed is better co-ordination of the application of anti-abuse measures in relation to third countries.

## Direct Tax

### Country Updates

*A summary of direct tax developments, provided by local specialists in our European Tax Competency Group.*

#### BELGIUM

##### ECJ Rejects Regional Inheritance Tax Exemption

The Flanders region of Belgium introduced, by the end of 1996, an inheritance tax exemption for family companies owned by the deceased. One of the conditions for this exemption is that the company should employ at least five workers in the Flanders region in the three years preceding the date of death.

In the case of *Maria Geurts and Dennis Vogten v Belgium* (C-464/05) of October 25, 2007, the heirs of a person with a company in the Netherlands challenged this condition. According to them, the freedom of establishment was violated by the limitation of the employment condition to the Flanders region only. The court dealing with this matter requested the ECJ for a preliminary ruling on the issue.

In its arguments, the Belgian Government stated that the exemption was available for companies outside the Flanders region, as long as they had at least five people working in Flanders and that, therefore, the measure was not in violation of the freedom of establishment. Moreover they argued that the condition enabled them to provide effective fiscal supervision. Council Directive 77/799/EEC of 19 December 1977, concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, does not apply to inheritance tax.

Both these arguments were rejected by the ECJ. The main purpose of the exemption was the survival of small and medium-sized undertakings and the maintenance of employment in them. The Court acknowledges that this may, under certain circumstances, be an acceptable justification for national legislation providing for a tax benefit for natural or legal persons. But the Court doesn't see how the obligation to employ workers in the Flanders region contributes to this justification. As to the second argument, the ECJ decided that the difficulty of providing effective supervision cannot justify the categorical refusal to allow the exemption.

The Court concluded that a region of an EU Member State may not limit an inheritance tax exemption to family companies that only employ workers in that region, citing Article 43 of the EC Treaty on freedom of establishment.

#### ESTONIA

##### Expected Changes to Corporate Income Tax

The Estonian Ministry of Finance has drafted Income Tax Act amendments which were approved by the government on 13 December 2007 and are now under discussion in parliament. Amendment of the currently applicable law is necessary to ensure compatibility with the Parent-Subsidiary Directive (Council Directive 90/435/EEC) as of 1 January 2009.

Amendments which have been drafted but not yet adopted as law set forth annual taxation of distributed corporate profits adjusted by, for example, gifts, donations, representation costs, expenses and payments unrelated to business and introduce a system of advance payments of corporate income tax which will be credited against the final corporate income tax liability. The amount of advance payments will be determined on the basis of the average taxable amount for the last three tax years and the tax rate currently in effect. The period of taxation for both resident and permanent establishments of non-resident legal entities will be either the calendar year or financial year (if different from the calendar year). The flat rate of income tax will be 20%, with effect from 1 January 2009, and 18% with effect from 1 January 2011.

The rules covering avoidance of double taxation in the case of inbound dividends will also be changed. Under the exemption method, it will be possible to deduct qualified dividends not only from distributed profits, but also from the taxable base, which consists of several other components in addition to dividends (gifts, donations, representation costs, expenses and payments unrelated to business, etc.).

As to the credit method, it will be applicable both to dividends, interest and royalties, and to any income subject to withholding tax in the source state. The tax withheld in the source state will be deductible not only from the tax levied on dividends, but also from the final corporate income tax levied on the whole taxable amount.

Furthermore, Estonia will abolish withholding tax on dividends made to non-residents, even if the recipient owns

less than 10% of the share capital or votes of the resident company distributing the dividends, irrespective of the fact that, in such cases, the application of withholding income tax is not prohibited by the Parent-Subsidiary Directive. Moreover, according to the draft law, withholding tax on licence fee payments made to non-residents is abolished. These amendments are a result of recent ECJ decisions.

Under the draft law, as of 1 January 2009, liquidation proceeds, payments upon share payback and decrease of share capital are equalised with dividends and taxed at the level of the company. (Currently, such payments are treated as a capital gain and are subject to tax treaty provisions.) We therefore recommend that foreign parent companies planning tax-efficient exit, liquidation or profit distribution via share buyback or capital decrease should contact our tax professionals immediately, in order to complete the necessary procedures by the end of 2008.

## FINLAND

### ECJ Ruling on the Finnish Transfer Tax on Shares

On 25 October 2007, the ECJ delivered its judgment in the case of *Fortum Project Finance* (C-240/06). The issue to be considered was whether Finnish transfer tax (*varainsiirtovero*) on securities was permitted under the free movement of capital principle and the Capital Duty Directive (69/335/EEC) in the case where securities are transferred as a contribution to a capital company which gives new shares of its own as consideration for that transfer (share exchange).

The ECJ took the view that the case must be decided solely based on the Capital Duty Directive. The key issue was whether Article 12(1)(a) of the Capital Duty Directive permits Finland to tax transfers of securities, including where the company in receipt of such securities gives its own shares in exchange, without infringing Article 12(1)(c) of that Directive. In other words, it must be determined whether Article 12(1)(a) must be considered to be a special provision as compared with Article 12(1)(c), so that the first provision takes precedence over the second in the situations that it is specifically designed to regulate.

According to the ruling, Article 12(1)(c) does not apply to the charging of a Finnish transfer tax, where securities are transferred as a contribution to a capital company which gives new shares of its own as consideration for that transfer.

Therefore, Article 12(1)(a) allows Finland to charge capital transfer tax in these circumstances.

### Cross-border Group Contributions

On 31 December 2007, Finland's Supreme Administrative Court issued two rulings concerning the permissibility of Finland restricting its group taxation regime to domestic companies and permanent establishments under EC law.

In Ruling 2007:93, the Supreme Administrative Court decided, on the grounds of the ECJ judgment in the *Oy AA* case (C-231/05), that a Finnish company was not entitled to deduct, in calculating its tax liability, a group contribution given to its UK-resident parent company.

In Ruling 2007:92, the Supreme Administrative Court dealt with the question of whether the fact that a group contribution is given to an EU-resident company with definitive losses similar to those in the *Marks & Spencer* case would entitle the Finnish company, under EC law, to make a tax deductible cross-border contribution. In the case at hand, a Finnish parent company was considering giving a group contribution to cover the capital losses of its UK-resident subsidiary. The UK subsidiary was not in a position to use its losses in its own tax return or within the UK's group relief system. Therefore, such losses would remain definitive, as were the losses at issue in the *Marks & Spencer* case.

The Supreme Administrative Court took the view that, based on the reasoning of the ECJ in the *OYAA* case, Finland is not obliged, under EC law, to allow a tax deduction for a cross-border group contribution, even if the group contribution was used to cover definitive losses of an EU subsidiary of the Finnish company.

It follows from the above rulings that Finland is not obliged to make amendments to, or abolish, its current group contribution regime due to concerns about EC law. However, discussion will continue about the necessity to at least modify the regime in the light of, for example, International Financial Reporting Standards (IFRS).

### Taxation of Cross-border Mergers

A Finnish company (A Oy) intended to merge into its Icelandic parent company, whose company form was comparable to a Finnish limited liability company. In the merger, all assets and liabilities of A Oy would remain

connected to the permanent establishment (PE) that the Icelandic parent company would constitute in Finland. The merger was intended to be implemented as a merger by absorption under the so-called EC Merger Directive (2005/56/EC). The Directive is applicable to mergers in both EU Member States and other countries in the European Economic Area (EEA).

According to the Finnish Business Income Tax Act, the rules regarding merger are applicable to companies resident in EU Member States. However, considering the freedom of establishment set out in Article 43 of the EC Treaty and in Article 31 of the EEA Agreement, the going concern principle provided for in Sections 52a-52b of the Finnish Business Income Tax Act was applicable to the merger in question, notwithstanding the fact that the place of residence of the receiving company was in another EEA country rather than in an EU Member State. Advance ruling was given by the Finnish Central Board of Taxation for fiscal years 2007 and 2008 and is non-appealable.

#### **Tax Liability of Representative of Finnish Branch**

Budget laws for 2008 include an amendment to Finnish tax law which abolishes the joint and several liability of the representative of the Finnish branch for income taxes imposed on the branch, provided that the branch is part of a company or other enterprise established in the EEA. The amendment, which follows a formal letter of notice from the European Commission, is effective from 1 January 2008.

## **FRANCE**

#### **Immovable Property Held by Non-resident Companies**

Following the ECJ decision in the *Elisa* case (C-451/05), France has modified the 3% tax on French immovable property held by non-resident companies.

Section 990 D of the French Tax Code provided that companies which directly or indirectly hold immovable properties in France are subject to an annual tax of 3% on the market value of the properties. However, Section 990 E provided that the tax is not due by companies whose effective place of management is in France, and foreign companies whose effective place of management is in a country which entered with France into a double tax treaty (DTT), including a mutual assistance clause or a non-discrimination clause based on nationality.

In the *Elisa* decision, which relates to a Luxembourg 1929 holding, the ECJ ruled that the French regulations were contrary to the free movement of capital principle.

The French amended Finance Bill for 2007 has modified Section 990 E so that, under certain conditions, the tax is not due by legal entities whose effective place of management is in an EU Member State.

#### **Real Estate Gains by Non-resident Companies**

On 6 December 2007, the Paris Administrative Court of Appeal ruled that the tax due by a Dutch foundation on the sale of shares of a French real estate company is contrary to both the non-discrimination clause included in the France-Netherlands DTT and the free movement of capital principle set out in Article 56 EC.

With regard to EU law, the Court referred to the ECJ decision in the *Stauffer* case (C-386/04) and stated that different tax treatment for residents' and non-residents' non-profit entities must either result from those entities being in different situations, or be justified by an overriding requirement of general interest.

In the case at hand, the Court held that:

- the Dutch foundation is comparable to a French "*Caisse de retraite et de prévoyance*" with respect to the foundation's activity and revenues and is thus in a comparable situation regarding the sale of shares of a French real estate company;
- pursuant to Section 244 bis A of the French Tax Code, the Dutch foundation is taxed on the capital gains realised on such sale, whereas a French *Caisse de retraite et de prévoyance* would benefit from an exemption of the French corporate income tax;
- the fact that such French entities realise public service missions does not constitute an overriding requirement of general interest which may justify the difference in treatment.

Hence, the Court concluded that the French regulations are incompatible with the free movement of capital principle. From a practical viewpoint, only EU-resident entities comparable to French entities which benefit from a tax exemption on capital gains realised on the sale of real estate assets may claim for the refund of the tax levied on such sales.

Furthermore, this decision highlights the possible incompatibility with the EC Treaty of the 16% tax on capital gains realised by foreign entities on the sale of substantial participations (Section 244 bis B of the French Tax Code).

## GERMANY

### Treaty-Override Rule Compatible with Basic Freedoms

On 6 December 2007, the ECJ issued a ruling in the case of *Columbus Container Services* (C-298/05), which concerned a German partnership that held a 20% interest in a Belgian CV (*Commanditaire Vennootschap*). The Belgian CV qualified under the country's concessionary Belgian Co-ordination Centre regime and thus benefited from a low level of taxation. The Belgian CV has been regarded as a transparent entity for German tax purposes and has been taxed at the level of the partners by applying the credit method instead of the exemption method agreed in a DTT.

The case considered the compatibility with the EC Treaty of a German treaty-override provision, regarding low-taxed passive income of a foreign permanent establishment.

The ECJ stated that there was neither an infringement of the freedom of establishment nor of free movement of capital. From the German point of view, both resident and non-resident partnerships are subject to the same taxation. The negative consequences arise only because both Germany and Belgium exercise their right to tax at the same time. However, the ECJ has no competence to assess whether a Member State has violated a DTT.

In the opinion of the ECJ, due to the current state of harmonisation, the Member States still have autonomy in taxation matters. There is no obligation for Member States to guarantee the same tax conditions as one another, even if this results in distortions of the choice of establishment.

The German treaty-override rule considered in the above case does not infringe the basic freedoms. Therefore, given the decision in the *Cadbury Schweppes* case, it might become more attractive to establish a foreign entity in the form of a corporation rather than a partnership or permanent establishment, since, provided that it is not an artificial construction, the switch-over clause does not apply.

### Deduction of PE Currency Losses

On 8 November 2006, Advocate General (AG) Eleanor Sharpston gave her opinion in the *Deutsche Shell* case (C-293/06). She held that it is contrary to the freedom of establishment to treat a currency loss of a parent company resulting from the repatriation of start-up capital granted to a foreign establishment as a part of that establishment's profits and to exclude that loss from the basis of assessment for German tax.

In 1974, Deutsche Shell, a German-resident corporation, set up a permanent establishment in Italy. Deutsche Shell provided its Italian PE with start-up capital, which was entered in the German balance sheet as well as in the Italian balance sheet in the respective currency (i.e., deutschmarks or lire). The generated profits of the Italian establishment were taxed in Italy and, according to the DTT, tax exempted in Germany. In 1992, Deutsche Shell closed down the PE and repatriated the allotted capital back to Germany. As a result of intervening changes in exchange rates, Deutsche Shell suffered a currency loss. This loss was not eligible for deduction in Italy since the Italian establishment accounted in lire and the exchange loss did not exist there. In Germany this loss was also ineligible for deduction since it was part of the foreign establishment exempt from German taxation. Deutsche Shell argued that the currency loss should be taken into tax account in Germany. However, the German tax authorities applied the DTT and the general application in German law and considered that the disputed currency loss was not eligible for the computation of Deutsche Shell's tax liability in Germany. Thus, the currency losses were not deductible anywhere.

The AG stated that Deutsche Shell has suffered a loss which cannot be taken into account in the valuation of its global profits for the purposes of tax assessment. This result indisputably makes the exercise of the right of establishment less attractive. This gives rise to a restriction on freedom of establishment. The resulting situation cannot be justified by reference either to the balanced allocation of taxing powers between Member States or by the need to preserve fiscal coherence. In the AG's view, a proper interpretation of the freedom of establishment requires such a loss to be taken into account in its entirety, in the same manner as any other operating loss. Given that it was invisible in the Italian tax computation in lire, it follows that it must therefore be taken into account in the German tax calculation of Deutsche Shell's global profits.

The AG's opinion, if followed by the ECJ, would mean that currency losses arising from foreign permanent establishments must be taken into account in full when determining the tax base of the parent company. As the AG's opinion is not binding on the ECJ, German companies or subsidiaries with foreign PEs should also consider whether they have made all possible protective claims for the deduction of losses incurred by foreign PEs, insofar as these losses are not tax-deductible in the state of origin or if these losses are tax-deductible only insofar as no tax-free profits are obtained from the PE.

#### **Deductibility of Losses of a Third Country PE**

On 6 November 2007 the ECJ gave its ruling in the case of *Stahlwerk Ergste Westig (SEW)* (C-415/06). This German company conducted business in the form of wholly-owned partnerships in the United States which derived operating losses. Due to the exemption method applying to income derived by permanent establishments under the DTT between Germany and the US, the losses were not included in the German tax base of the main company. Likewise, without regard to the applicable DTT, the German Income Tax Act also restricts the availability of losses of a foreign PE.

The ECJ referred to its recently rendered judgments and decided that national rules which apply to holdings by nationals of the Member State concerned, giving them definite influence on the company's decisions and allowing them to determine its activities, come within the substantive scope of the provisions of the Treaty on the freedom of establishment. According to the ECJ, the applicable DTT concerns the situation of a permanent establishment which is only applicable if the company may exert definite influence on the PE's decisions. Even if the German legislation has restrictive effects on the free movement of capital, such effects are an unavoidable consequence of any restriction and freedom of establishment and do not justify an independent examination of that legislation in the light of Article 56 EC. Considering that Articles 43 and 48 EC cannot be invoked if the case concerns a PE located in a non-EU/EEA member state, the ECJ concluded that the German provision did not contravene EC law.

Despite the ECJ's opinion that the case at hand is clear and the decision can be deduced from established case law, there remain substantial questions in respect of the application of DTTs and the exemption method in respect of losses of third country partnerships.

The ECJ arrived at its decision by taking into account the purpose and scope of the national provision or the DTT respectively. To strengthen its view, the Court referred to the factual situation, i.e., that the company fully controls the partnership. It should be noted, however, that the national provisions as well as the provisions in the DTT in respect of foreign partnerships apply not only to holdings which confer on the holder a definite influence on the decisions of the company, but also to minority holdings, e.g., if the case deals with a 20% or lower ownership interest in the partnership. Therefore, only if the second condition established by the ECJ, i.e., that in fact the company exerts definite influence in the partnership, is considered cumulatively with the first condition, the freedom of establishment should apply. Consequently, the scope of the free movement of capital with respect to non-EU/EEA Member States is far from being finally decided.

#### **Tax Exemption for Teaching at a Foreign University**

Under German law, income from a teaching activity on a secondary basis and in a quasi-honorary capacity carried out for a legal person established under public law, in this case a university, is exempted from income tax. In the *Jundt* case (C-281/06), the ECJ ruled that this exemption should also be granted, if the institution established under public law is situated in another Member State. A rejection is contrary to the freedom to provide services.

Despite the fact that the Member States are themselves concerned with the organisation of their education systems, it is not justified to restrict a tax exemption to taxpayers who carry out their activity for or on behalf of national public universities.

#### **Threshold for Non-taxable Minimum Holding of Shares**

Under German law, after a holding period of one year, profits made by an individual from a sale of shares are only subject to tax if a certain ownership threshold is exceeded. In 2001 the relevant minimum holding of shares in a corporation resident in another Member State was reduced to at least 1% of the company's capital. By contrast, the minimum holding of shares in a domestic corporation remained at 10% of shares. Therefore, a profit from a sale of shares in a corporation resident in another Member State was immediately taxable, if the seller held, either directly or indirectly, more than 1% of the company's capital within the previous five years, whereas an equal sale of shares in a domestic corporation in the same

circumstances was taxable only in the case of a substantial shareholding of at least 10%.

The ECJ decided in the case of *Gronfeldt v Finanzamt Hamburg* (C-436/06) that this difference in treatment is contrary to the free movement of capital. Meanwhile, the differing preconditions for a substantial shareholding have been harmonised, so that the rule in dispute only applies to the year 2001.

## IRELAND

### Shipping Tonnage Tax under Investigation

The European Commission has decided to open a formal investigation against the Irish authorities after they notified the Commission of their plans to change the Irish flat-rate tax regime on the tonnage of maritime ships. The Irish tonnage tax scheme was initially approved by the Commission in 2002 and authorised to run until 2012. The regime allows shipping companies to pay a flat-rate tax based on the tonnage of their fleet, instead of a company tax. The Irish Government now plans to amend the rules laid down in the scheme and to apply those changes retroactively from 1 January 2006 onwards.

The flat-tax regime lays down rules for a so-called time charter, i.e., the renting of a ship with its crew for a certain period of time. The 2002 tonnage tax regime allowed for a ratio of one owned to three time-chartered ships in a fleet. The Irish Government proposes to allow a 100% time-chartered fleet to benefit from the regime.

The Commission intends to investigate whether the amendments to the tonnage tax regime are in conflict with the Community guidelines on State aid to maritime transport that were issued in 2004. Although the text of the 2004 guidelines does not explicitly impose restrictions on the allowable ratio, the Commission has so far only allowed tonnage tax regimes with ratios of 1:3 or 1:4. The Commission, therefore, considers it necessary to give stakeholders an opportunity to comment, notably on whether such variations could undermine the equitable balance so far achieved between different Member States.

## NETHERLANDS

### Dividend Withholding Tax Exemption Infringes EC Law

On 8 November 2007, the ECJ issued its ruling in the Dutch

*Amurta* case (C-379/05). This case concerns the Dutch exemption for dividend withholding tax, which distinguishes between dividends paid to domestic companies and dividends paid to foreign companies. According to the ECJ, the Dutch rule constitutes a restriction on the free movement of capital, since it treats non-resident shareholders less favourably than comparable resident shareholders. This restriction cannot be justified, unless the restrictive effects of the Dutch withholding taxation is neutralised under the relevant tax treaty in the shareholder's resident state. A possible relief based on national tax law should, by contrast, not be taken into account in this respect.

Three weeks later, the Dutch Supreme Court reached the same conclusion in a similar case regarding a Luxembourg company with a minority interest in a Dutch BV. Here too, the Dutch Supreme Court held that the Dutch exemption for dividend withholding tax infringes the free movement of capital.

As of 1 January 2007, the Dutch exemption for dividend withholding tax is extended to EU-resident companies. With effect from this date, EU companies having an interest in a Dutch company of, generally, 5% or more, may claim the exemption, provided that all the requirements of the Parent-Subsidiary Directive are met. The above cases are, however, still relevant for taxable years preceding 2007.

## NORWAY

### Taxation of Norwegian Societas Europaeae (SE) Companies

As the Council Regulations on the Statute for a European Company do not regulate the taxation of SE companies, it is uncertain how Norwegian SEs should be taxed. However, the Norwegian Ministry of Finances has, on 20 December 2007, written a letter confirming that Norwegian SE companies are regarded as covered under the Norwegian participation exemption regime on equal terms as Norwegian limited companies. This implies that Norwegian SE companies are tax exempt on dividend income and capital gains deriving from shares in companies resident in EU/EEA Member States and from non-portfolio investments in shares in companies resident in high-tax countries outside the EU/EEA.

The Ministry of Finances is now considering changes to Norwegian tax law to clarify the situation.

## POLAND

### Tax on Dividends Paid to Norway Contrary to EU Law

The Polish tax authorities have recently confirmed that tax withheld from dividends paid by Polish companies to their Norwegian shareholders is contrary to EU law and should be returned. Until 2006, dividends paid to Norwegian shareholders were subject to the Polish 19% withholding tax. Based on the Poland-Norway DTT, the tax rate could be reduced to a minimum of 5% (for qualifying shareholders) or 15% (for portfolio shareholders). At the same time, dividends paid to domestic shareholders were basically tax neutral and dividends paid to EU-qualifying shareholders were exempt from the withholding tax.

Such provisions were questioned by the European Commission as contravening EU law. In consequence, Polish domestic provisions were amended. From 1 January 2007, dividends paid to qualifying Norwegian shareholders are exempt from the withholding tax. This position makes it possible to claim refunds of tax withheld from dividends paid to Norwegian shareholders between 1 May 2004 and 31 December 2006. The same consideration applies to dividends paid to other EEA countries, such as Iceland and Liechtenstein.

## PORTUGAL

### Approval of 2008 Budget Law

The Budget Law for 2008 has been approved in the Portuguese Parliament, subsequently ratified by the President and entered into force on 1 January 2008. The main changes relating to the taxation of non-resident entities are as follows.

#### *Withholding tax on dividends distributed to EU residents*

The requirements for the Corporate Income Tax (IRC) exemption on dividends distributed to companies resident in other EU Member States under the conditions set out in the Parent-Subsidiary Directive will follow, in general, those established for the avoidance of double taxation on profits distributed to Portuguese resident entities, as follows:

- the foreign parent company needs to hold at least 10% (instead of 15% before 1 January 2008) in the share capital of the controlled company or a participation with an acquisition value of at least €20 million; and

- the referred participation in the Portuguese company must be held by the foreign entity for a consecutive period of at least one year (two years before 1 January 2008).

The same requirements must be met for the withholding tax exemption on profits distributed by a Portuguese company to the permanent establishments of entities resident in other EU Member States which are also located in other Member States and which fulfil the requirements foreseen in the Parent-Subsidiary Directive.

#### *Withholding tax applying to non-residents*

The deadline for the submission of tax residency certificates, based on the appropriate *Relações Fiscais Internacionais* (RFI) forms, has been extended to the 20th day of the month following the withholding tax due date, payment date, etc. Previously, i.e., until 31 December 2007, the certificates needed to be delivered to the payer entity before the due date for payment of withholding tax.

#### *Secondary liability of the payer entity*

If the certification of tax residency is not made by the stipulated deadline, the payer entity is liable for the payment of the withholding tax to the Portuguese tax authorities, unless it can prove that the non-resident entity meets the conditions to benefit from the withholding tax exemption or reduction. However, penalties will still be due.

#### *Refund claims*

The two-year period to request the refund of withholding taxes, in all cases in which the certificates of tax residency were not provided to the payer entity, will be counted as from the end of the tax year and not from the tax event date.

#### *Validity of the forms*

The tax residency certificates (official RFI forms) will be valid for one year, regardless of the existence of continued contractual arrangements between the parties.

#### *Personal Income Tax*

There will be a reduction from 25% to 20% on the final income tax rate levied on employment or business income, or pension income, obtained in Portugal by individuals resident outside Portugal.

The Budget Law also authorises the Portuguese Government to legislate in order to allow individuals resident in other

EU Member States to choose to be taxed under the general progressive tax rates' regime applicable to individuals resident in Portugal, instead of being taxed at the final rate of 20% (generally applicable to individuals resident outside Portugal). All income earned by such taxpayers, including income derived from outside Portugal, will be taken into account on the same basis as for residents, for the purposes of determining the applicable tax rate.

#### *Advance Pricing Agreements (APAs)*

Taxpayers will be able to enter into advance transfer pricing agreements, upon a request submitted to the Portuguese tax authorities. These agreements will be binding on the taxpayers and the Portuguese tax authorities for a period of not more than three years and will govern the methods used to ensure the determination of terms and conditions which would normally be agreed between independent entities.

#### *Stamp duty on capital increases*

Bearing in mind the need to adapt Portuguese law to recent ECJ case law, share capital increases in cash are exempt from stamp duty as of 1 January 2008.

## ROMANIA

### **Infringement Procedure re Car Registration Rules**

The European Commission has decided to proceed with the second step of infringement proceedings against Romania regarding its registration tax on imported second-hand cars. The Commission's decision follows the unsatisfactory reply received from the Romanian authorities to its letter of formal notice in the spring of 2007. A "reasoned opinion" has now been issued, formally requesting Romania to change its legislation and end the infringement within two months. If Romania does not comply, the Commission might decide to refer the matter to the ECJ.

The Romanian car registration tax was introduced in January 2007 (i.e., at the same time that Romania joined the EU). The tax is applied the first time a car is registered in Romania, with the amount of tax depending on the car's age, engine capacity and emissions output. Though the tax was introduced partly to protect the environment by making it more expensive for people to register older, more polluting cars, the Commission takes the view that Romania's car registration tax discriminates against second-hand cars brought into Romanian territory from other Member States. According to

the Commission's findings, Romania's national rules on car registration tax are incompatible with Article 90 of the EC Treaty under which Member States are not allowed to impose higher taxes on products of other Member States than on similar goods from the domestic market. In previous cases, the ECJ has consistently held that Member States may levy registration taxes on second-hand imported cars, but must take into account the actual depreciation in the car's value when calculating the amount of tax due. See ECJ cases *Nunes Tadeu* (C-345/93); *Commission v Denmark* (C-47/88); and *Commission v Hellenic Republic* (C-375/95).

The Commission argues that, under Romanian law, car tax on imported second-hand vehicles is not in line with the actual depreciation of similar cars registered on the domestic market. On the contrary, the tax amount calculated is increased on, for example, the basis of the car's age. Given that the Romanian car registration tax is levied only once, imported used cars, by default, fall within the most heavily taxed category. In the view of the Commission, such levies are in conflict with article 90 of the EC Treaty and ECJ findings on this issue.

## SLOVAKIA

### **State Aid Investigation re Glunz & Jensen**

The European Commission has decided to bar regional investment aid worth SKK 42 million (some €1.15 million) in the form of a tax exemption in favour of Glunz & Jensen, because it is incompatible with EU rules on State aid, and in particular the Regional Aid Guidelines. The Commission ruling related to a tax relief application that Glunz & Jensen had filed in connection with the establishment of its Slovakian factory in 2005.

The Commission noted that Glunz & Jensen hold an important share in the graphic arts pre-press processing equipment market in Europe and that work on the new factory had already started before the application for aid – thus showing that the incentive factor required by the Guidelines had no impact in this case. It was clear that the project could be sustained without State aid. The fact that Glunz & Jensen, the beneficiary, already hold a large market share means that the allocation of State aid to them would have negative effects on competition and trade. The granting of the proposed aid would not contribute to regional development and would have created significant distortions of competition in this specific market. The incompatibility of the proposed aid with the

single market is based on Article 87(3)(a) of the EC Treaty and the Guidelines on National Regional Aid 2007-2013 (see IP/05/1653).

Competition Commissioner Neelie Kroes said “This decision illustrates my determination to curb regional aids that distort competition in favour of a major market player and lead to a significant effect on trade between Member States”.

The non-confidential version of the decision will be made available under the case number C12/2007 in the State aid Register on the DG Competition website once any confidentiality issues have been resolved.

## SLOVENIA

### **Regional Tax Incentives for Research & Development**

Slovenia’s Government has approved a decree allowing regional tax incentives for research and development (R&D). In an attempt to encourage investment in new technology. In the long run, the initiative aims to increase the competitiveness of Slovenia’s economy and attract foreign investors.

Slovenia’s previous Corporate Income Tax Act allowed a “general investment incentive” deduction from taxes of up to 20% of the amount invested in internal R&D activities or external R&D services. After the approval of the decree, taxable legal persons can make additional regional deductions of 10% or 20%.

The Slovenian Government also voted in favour of the establishment of the “CEE-ClusterNetwork”, which will assemble ministers, regional development agencies and innovation centres from 11 regions in Central and Eastern Europe to mobilise and support national and regional innovation policy. The EU’s PRO INNO programme, established to increase innovation potential in the region, will fund the CEE-ClusterNetwork.

## SPAIN

### **Non-residents Working in the Diplomatic Service**

The European Commission has requested Spain to amend discriminatory tax rules applied to non-residents recruited to work in Spanish diplomatic or consular offices. The Commission has sent Spain a formal request to amend its legislation according to which persons resident in a Member

State other than Spain, when recruited to work in a Spanish diplomatic or consular office, cannot benefit from any personal or family allowances. The Commission considers that this tax provision contravenes the free movement of workers and self-employed persons guaranteed by Articles 39 and 43 of the EC Treaty and the corresponding provisions of the EEA Agreement, because Spanish residents can benefit from these allowances while non-residents cannot. The request is in the form of a “reasoned opinion”, the second stage of the infringement proceedings provided for in Article 226 of the Treaty. If Spain does not respond satisfactorily to the reasoned opinion within two months, the Commission may refer the matter to the European Court of Justice.

Under the Spanish legislation, a person who is recruited from a Member State other than Spain to work abroad in a diplomatic mission or in any other similar institution continues to be treated as a non-resident for tax purposes. This leads to the restricted availability of certain tax advantages. By contrast, those persons who were resident in Spain before being recruited to work abroad are treated as residents.

### **State Aid Investigation of Financial Goodwill Amortisation**

On 21 December 2007, the European Commission’s decision to open a formal State aid investigation into the financial goodwill amortisation of the Spanish Corporate Tax Law was published in the Official Journal. As indicated in previous issues of *EU Tax News*, this provision allows a Spanish company to amortise, during the 20 years following the acquisition, the financial goodwill resulting from the acquisition of shares representing at least 5% of non-Spanish companies meeting certain requirements.

Publication of the formal Decision in the Official Journal is an important event, since interested parties have a month after publication to submit to the Commission their comments on the measure under scrutiny and the potential recovery issue.

## SWEDEN

### **ECJ Ruling on Participation Exemption**

On 18 December 2007, the ECJ gave its judgment in the case of *Skatteverket v A* (C-101/05). The case raised the question of whether the free movement of capital under Article 56 of the EC Treaty requires that the Swedish participation exemption, which applies to the distribution of shares of an EU/EEA-resident subsidiary, should also be of general application

where the subsidiary is resident in a “third country” (i.e., in a non-EU/EEA territory).

The ECJ found that the Swedish rule could be justified because of the need to guarantee the effectiveness of fiscal supervision and that the rule is proportional. The ECJ declared that the EC case law which relates to restrictions within the EC cannot be transposed in its entirety to movements of capital between Member States and third countries, since such movements take place in a different legal context. Firstly, there is no legislation such as the Mutual Assistance Directive in place between EC and third countries. Secondly, the tax authority does not have the same possibility to control the correctness of the supporting documents that the taxpayer provides when the company is resident in a third country, compared with when the company is resident within the EC.

The ECJ's judgment offers a detailed analysis of the free movement of capital in Article 56 as it applies to third countries, and the grounds of justification where a third country is involved. However, the decision suggests that there may well be other cases where a domestic provision of a Member State could contravene the EC Treaty, where it treats capital movements between that Member State and third countries disadvantageously compared to capital movements within that Member State. This will depend on the specific context of the domestic provision in question.

## Indirect Tax

### Latest EU Developments

#### VAT: Council Grants Reduced Rates Extension

At the meeting of the EU's Economic and Financial Affairs Council (ECOFIN) on 4 December 2007, ministers adopted a general approach on a draft directive aimed at renewing temporary derogations that currently allow the Czech Republic, Cyprus, Malta, Poland and Slovenia to apply reduced VAT rates to certain services. The derogations were introduced upon the accession of these countries to the EU and were due to expire at the end of 2007. They will now be valid for a further period until 2010 (but seem unlikely to be extended beyond that date). The official reference for the new legislation is COM(2007)

0381 final – CNS/2007/0136 – Council Directive amending Directive 2006/112/EC with regard to certain temporary provisions concerning rates of value added tax.

Under the EU's current VAT regime, Member States can only set their own VAT rates between 15% and 25%. The derogation arrangements allow the Czech Republic, for example, to apply a reduced VAT rate of 5% to construction work for residential housing. The decision to extend the derogations was mostly based on the argument that such a practice would help bridge the differences between old and new Member States.

Existing EU rules require Member States to apply a standard VAT rate of at least 15%, with derogations in certain instances for certain countries. These include:

- permanent reduced VAT rates for a limited list of goods and services;
- temporary reduced rates for certain locally-provided labour-intensive services (e.g., small repair services, renovation of private dwellings, window cleaning and private household cleaning, domestic care services, hairdressing);
- other derogations with a limited timeframe, most until the end of 2007, introduced by their respective acts of accession for the Member States that joined the EU in 2004.

It is the latter derogations that are concerned by the draft directive. For a further period until 31 December 2010, the draft directive will allow :

- the Czech Republic to apply a reduced VAT rate of 5% to construction work for residential housing;
- Cyprus to grant VAT deductibility for the supply of pharmaceuticals and most foodstuffs, and to apply a reduced VAT rate of 5% to restaurant services;
- Malta to grant VAT deductibility for the supply of pharmaceuticals and foodstuffs;
- Poland to grant VAT deductibility for the supply of certain books and specialist periodicals, and to apply reduced VAT rates of 7% to restaurant services, to the construction, renovation and alteration of housing, and to the supply of new residential buildings, as well as a reduced rate of 3% to the supply of most foodstuffs;
- Slovenia to apply reduced VAT rates of 8.5% to the preparation of meals and of 5% to construction, renovation and maintenance work for residential housing.

Both the European Council and the European Commission agreed that the approach would not have any negative impact on future discussions with regard to the redefinition of the application scope of reduced VAT rates. They continued to affirm, however, that the transitional rules included in the accession treaties would not be further extended.

### **Council Approves New Rules for VAT on Services**

At the ECOFIN meeting on 4 December 2007, the European Council reached political consensus on two draft directives and a draft regulation to change VAT rules so as to ensure that VAT on services accrues to the country where the consumption takes place, thus preventing any distortions of competition between Member States applying different VAT rates. According to the new rules, taxation for VAT will be obligatory for business-to-business supply of services at the place where the customer is situated, and no longer where the supplier is located, as is currently the case.

For business-to-consumer supply of services, the place where taxation accrues will continue to be that where the supplier has his place of establishment. Nonetheless, in certain cases, the general rules for both businesses and consumers will not be applicable, and specified rules will apply to reflect the principle of taxation at the place of consumption.

The exemptions mostly concern restaurant services, hiring of transport means, cultural, sporting, scientific and educational services, and business-to-consumer supplies of telecommunications, broadcasting and electronic services. More precisely and to simplify the VAT arrangements made necessary by the new rules for telecoms, broadcasting and electronic services, a “one-stop” system will be introduced to enable service providers to fulfil in their home Member State a single set of obligations for registrations, declarations and payments, including for services provided in other Member States where they are not established. VAT revenue will then be transferred from the country where the supplier is located to that where the customer is situated, whose VAT rates and controls will be applicable.

The measures will, as a general rule, enter into force on 1 January 2010 and the “package” will contain:

- a draft directive on the place of supply of services;
- a draft directive on procedures for VAT refunds to non-established businesses;

- a draft regulation on improved administrative co-operation as regards VAT and the exchange of information between Member States.

The Council’s political agreement was made possible by a compromise regarding the change of rule on the place of taxation for business-to-consumer supplies of telecommunications, broadcasting and electronic services.

For this sector:

- application of the new rules and the one-stop scheme will be deferred to 1 January 2015;
- the Member State of establishment will, until 1 January 2019, retain a proportion of VAT receipts collected through the one-stop scheme. This proportion will amount to 30% from 1 January 2015 until 31 December 2016, 15% from 1 January 2017 until 31 December 2018 and 0% from 1 January 2019 onwards;
- The Commission will be asked to report on the feasibility of the new rules before its entry into force. The report, however, will not affect entry into force of the new rules.

### **Proposal to Simplify VAT Rules for Financial Sectors**

On 28 November 2007, the European Commission furthered its efforts to modernise the existing VAT rules regarding the financial and insurance services sectors and announced its proposal for an updated VAT Directive (2006/112/EC) in these fields, together with a complementary regulation to clarify the scope of exempt services.

Financial and insurance services are generally exempt from VAT but the exemption dates from 1977 and the legislation has not kept abreast of developments since then, despite massive changes in the market. Today, the exemption is not applied uniformly by Member States and the ECJ has frequently been called upon to fill the legislative gap and clarify the correct interpretation. The Commission’s proposals are intended to create more certainty and security for Member States and for financial and insurance institutions by setting clear modern definitions of exempt services.

Currently, only certain EU Member States allow the option for taxation in these sectors, which according to the European Commission, is “potentially distortive.” Moreover, as a harmonised system of exemptions across the Member States is not applied, clarification of the scope of exempt services was deemed necessary.

The proposal's key measures include:

- increased legal certainty for businesses and Member States through clarifying and updating definitions of the exempt services;
- giving banking and insurance companies the option to tax their services if they wish to do so, and in return allow them to deduct VAT paid for supply services or goods, and;
- the introduction of an industry-specific exemption from VAT on cost-sharing arrangements on purchases, for example IT systems, including cross-border operations.

More precisely the proposal would introduce the following three major changes.

- *Redefinition of VAT exemptions, modernising their wording and scope and clarifying their application.* In addition to the linguistic changes, this proposal would clarify the VAT position of service providers who bridge the gap between insurance and financial service intermediation. A change of great importance is proposed in relation to the outsourcing industry. The supply of any constituent element of an exempt service will also be exempt, where it constitutes a distinct whole and has the specific and essential character of the exempt services. However, this principle would not directly apply to the fund management exemption or the intermediary exemption;
- *Introduction of a mandatory cross-border option to tax (OTT) regime for suppliers of financial services and insurance.* This means that an industry-specific VAT exemption will be available for cross-border cost-sharing arrangements such that costs could be shared within a group without creating an additional VAT burden. Although the clarified scope of exempt services and the exemption for cost-sharing agreements should come into force at the end of 2009, the option to tax is, according to the proposal, not to be implemented before 1 January 2012;
- *Creation of a new regime of exempting the supplies of cost-sharing vehicles operating in the financial services sector.* This regards the form included in Article 132(1)(f) of the principal VAT Directive applicable only to the financial services sector. The proposal makes it clear that the members of a cost-sharing vehicle can only carry out exempt activities outside the scope of VAT, whereas the current Luxembourg regulations envisage a proportion of 30% of activities subject to VAT, thus enabling the banks, insurance companies, and other financial institutions to be

part of such a group. The new proposal, therefore, represents a drawback with regard to the possibility of including certain outsourced or pooled services.

For suppliers and service providers in the financial services sector, one of the implications is the need to evaluate the change this proposal might have on their liability. They should consider the impact on their contractual and pricing structures, accounting systems and VAT recovery position. Investment funds might be particularly affected.

The approval of the Member States on this highly sensitive proposal is still pending.

### **Duty-free Allowances for Travel from Third Countries**

On 20 December 2007, the European Council adopted a Directive regarding duty-free allowances on goods carried by persons entering the European Union from third countries. The new Directive, effective as from 1 December 2008, will revise and replace Directive 69/169/EEC on traveller allowances, adapting it to the enlarged EU whilst restructuring it and simplifying certain provisions. It provides for an increase in duty-free allowances, in part to cater for the effects of inflation since they were last revised in 1994.

The main elements of the Directive are as follows.

- The value limit on duty-free allowances is increased from €175 to €430 for air and sea travellers, and from €175 to €300 for travellers by land (including by inland waterways);
- Member States may apply different quantitative limits for duty-free imports of tobacco products (cigarettes, cigarillos, cigars, smoking tobacco) depending on whether they enter the EU by air (higher limit) or by land or water (lower limit).

### **VAT: Administrative Co-operation in Fighting Fraud**

At the ECOFIN meeting of 4 December 2007, the European Council adopted a strategy to combat fraud at Community level and especially in the field of indirect taxation, by intensifying administrative co-operation between Member States. The new steps continue an initiative undertaken by the Commission in 2006 and include both conventional and more bold measures to combat fraud. (See documents 9803/1/7 REV1 FISC 81 and 10052/07 FISC 88 of the European Council). They follow up on the findings of a European Commission communication (COM(2007) 758 final) in November 2007. The recommendations of the Anti-Tax Fraud

Strategy (ATFS) expert group, set up by the Commission in January 2007, were also taken into account.

The implication of the Council's decision is that Member States need to adopt measures at national level and introduce appropriate legislation to ensure a comparable level of protection in terms of sanctions and criminal proceedings against VAT fraudsters, irrespective of whether the committed fraud leads to losses of revenue incurred within their own territory or within the territory of another Member State.

Commissioner Kovács was satisfied with the outcome of the discussions between the relevant authorities and business on the one hand and the European Commission on the other and expressed the need to empower the authorities with more up-to-date tools and processes to pursue the combat of fraud in a more efficient and effective manner.

The key issues included in the initial communication from the European Commission comprised the following.

- The need to improve the accuracy of the information exchanged between Member States on intra-Community trade. If new or quicker reporting obligations from traders would be required, then this could be offset with a reduction of administrative burdens in other areas;
- The need for a real European approach that should be fully integrated into the management of the VAT system by the tax authorities. Tax authorities should take responsibility not only for the protection of their own national VAT receipts but also for the VAT receipts of other Member States. This should result in a higher level of protection of revenues for all Member States;
- The need for a common approach to the registration and de-registration process of taxable persons in the EU. In the Commission's view, a Member State should be liable for the VAT loss incurred by another Member State due to its negligence in updating the database of its taxable persons;
- The capacity of tax administrations to collect VAT receipts in fraud cases should be enhanced, through a targeted use of joint and several liability for traders involved in fraudulent activities. The legal certainty for genuine businesses and an improvement of the mutual assistance for the recovery of taxes has to be ensured.

To fulfil the aforementioned needs, the European Commission proposed the following measures.

- Improvement of the capacity of Member States to tackle tax fraud within the existing legal framework (the so-called "conventional measures" option);
- Modification of the current VAT system by providing Member States the option to extend the reverse charge mechanism to domestic transactions in a Member State;
- Modification of the current VAT system by introducing a system of taxation of intra-Community supplies of goods.

The European Council requested the European Commission to continue its work with a view to reinforcing the management of the EU's VAT system by the Member States and acknowledged the importance of disposing of up-to-date information on the status of traders for the correct functioning of the VAT arrangements ruling intra-Community trade. Moreover, it expressed its support for further activities and work on a common approach to registration and de-registration of traders and agreed that the capacity of Member States to collect the VAT in fraud cases could be enhanced.

Finally the Council invited the Commission to consider legislative proposals, where appropriate, and to work on all these aspects in close co-operation with Member States and to report to the Council during 2008 on the progress made.

#### **Call to Remove VAT Exemption from Postal Services**

After the Commission issued a draft directive regarding VAT application to all postal services in 2003, negotiations were severely delayed in the Council. The draft directive proposed the application of VAT to all postal services, but would also allow Member States to apply a reduced VAT rate on those services that are covered by a universal postal service. The European Parliament was in favour of a change to European tax legislation, but the Council could not reach agreement. Four years and several presidencies later, the Council is still not keen on proceeding with negotiations. As the liberalisation of the postal sector is nearly completed, European public postal operators have again raised the issue of the removal of VAT exemption.

Because of the competitiveness of the European postal market, equal tax treatment is, perhaps, inevitable. The removal of the VAT exemption would also allow postal operators to deduct VAT on the investments they are making in infrastructure to update their facilities ahead of the opening up of the market in 2011 or 2013. The equal tax treatment is strongly favoured

by 17 members of PostEurop, an association of 43 European public postal operators. However, Germany, Denmark, Ireland and the United Kingdom oppose equal tax treatment among postal operators.

## Country Updates

### NETHERLANDS

#### Management of Pension Funds and VAT Exemption

The Dutch Parliament recently had to examine Dutch VAT treatment regarding pension funds management. The latter is exempt in certain Member States considered to fall under Article 135(1)(g) of the Sixth VAT Directive addressing the VAT exemption for the management of collective investment undertakings. Such VAT exemption is beneficial, as pension funds generally do not have the right to recover the VAT charged to them by the manager(s).

The Dutch tax authorities have generally taken the position that the management of pension funds does not fall within the scope of the VAT exemption for the management of collective investment undertakings, since, in their view, a pension fund serves a different purpose from that of regular collective investment vehicles. The State Secretary added, however, that when pension funds and/or other investors are collectively investing in an investment fund, pension funds will be able to benefit from the VAT exemption for collective investment undertakings, provided that all other conditions for the application of the VAT exemption are met.

### POLAND

#### VAT Derogation Regarding Border Bridges

In its decision of 12 December 2007 (COM(2007) 771 final), the European Commission authorised Germany and Poland to apply a derogation to VAT with regard to border bridges, which are partly on the territory of the German Federal Republic and partly on the territory of the Republic of Poland.

The two countries requested authorisation to apply derogating measures in relation to the construction and maintenance of border bridges forming part of their respective rail networks. In accordance with Article 395(2) of the Sixth VAT Directive, the Commission informed the other Member States by letter dated 24 October 2007 of the requests made by the Federal Republic of Germany and the Republic of Poland.

The following day, the Commission notified Germany and Poland that it had all the information necessary to consider the requests. Since the derogation would have no negative impact on the Community's VAT revenue and would simplify the procedure for charging the tax on the construction and maintenance of the bridges in question, authorisation for the derogation was duly given.

### SWEDEN

#### VAT Treatment of Building and Civil Engineering Works

On 18 October 2007, the Swedish Government introduced a bill proposing to abolish the special regulations in the Swedish VAT Act relating to the favourable treatment of building and civil engineering works in the construction sector.

The current regime makes it possible to postpone the required VAT reporting until two months after the final inspection of the works carried out (or after a corresponding event has been conducted). Normally, no VAT needs to be reported until after the final inspection. This is the case even if the builder has received advance payments or payment on account during the construction period.

These regulations will be replaced by an "invoice date method" where the VAT reporting obligation takes place when the invoice is in fact issued. However, the VAT shall in all circumstances be reported no later than two months after the date of supply. The new regulations are intended to enter into force on 1 January 2008.

### UNITED KINGDOM

#### Hire of Motor Cars Not Exclusively Used for Business

On 20 December 2007, the European Council adopted a decision authorising the United Kingdom to continue to apply a restriction (to 50%) of the right to deduct input VAT incurred on the hire or lease of motor cars not exclusively used for business purposes.

Where the right to deduct has been limited, the taxable person is relieved from accounting for VAT on the private use of the vehicle. The authorisation will expire on the date of entry into force of EU rules governing restrictions on the right to deduct in this area, but on 31 December 2010 at the latest. This special measure is a derogation from common taxation rules. ■

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