

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



## Major developments

### Anti-abuse rules proposed for the CCCTB

On 26 March 2008, the European Commission (EC) published a working document on possible anti-abuse rules for the proposed Common Consolidated Corporate Tax Base (CCCTB). The document foresees anti-abuse rules that take into account recent European Court of Justice (ECJ) decisions but leaves open the question of what combination of general and/or specific anti-abuse rules to use. A general anti-abuse rule would allow tax authorities to combat wholly artificial transactions, while giving the taxpayer the possibility to demonstrate commercial justification. Examples of specific anti-abuse provisions are put forward for the experts to discuss. These include:

- ▶ a test limiting the deductibility of interest to a certain percentage of earnings before interest and tax (EBIT) or earnings before interest, tax, depreciation and amortisation (EBITDA)
- ▶ controlled foreign companies (CFC) rules, which are seen as complementary to the switch-over rule
- ▶ recharacterisation of "sales of shares" as "sales of assets" in order to avoid the risk that assets are artificially concentrated in a company subject to the participation exemption
- ▶ avoidance of double deductions in "sandwich situations" where a company resident in a non-CCCTB area is part of a group consolidating under the CCCTB Directive;
- ▶ rules to avoid the manipulation of factors in the formulaic apportionment.

#### In this issue

**Major developments** 1

**Editorial** 1

**Focus on charities** 2  
Impact of ECJ decisions

**Direct tax** 3  
Country updates

**Indirect tax** 10  
Latest EU developments  
Country updates

**Contacts** 15  
Direct tax and indirect tax

#### Editorial

In this "new-look" edition of *EU tax news*, we include a special focus on charities and not-for-profit organisations due to their increasingly important role in society.

In the field of direct taxation, we report on specific country news such as the Draft German Tax Act 2009 and Dutch inheritance tax. Under indirect tax, we look at ECJ decisions on deduction of input tax and VAT exemption for insurance brokers, as well as news from specific countries, including Italy (the reverse charge mechanism and the abuse of law principle), Slovakia (excise duty reductions for transport by rail and inland waterways) and Spain (VAT on barter transactions).

Matthias Roche

# Focus on charities

*Charities and not-for-profit organisations (NFPOs) should benefit from recent decisions of the ECJ, facilitating cross-border operations.*

## **Introduction**

Though most European countries assume the primary responsibility for the safety and well-being of their citizens, even the most committed "welfare state" is unable to provide for all the needs and requirements of people in a modern society. Public sector provision is thus supported by a wide range of private initiatives ranging from small local volunteer groups to large international organisations. All EU Member States recognise the important role played by the charitable sector and have therefore introduced legal possibilities, including tax incentives, to enhance the ability of private organisations, associations and foundations to carry out activities for the public benefit. The activities of NFPOs are not restricted to their home countries. They might, for example, pursue their charitable activities abroad or operate internationally in managing their assets. NFPOs can make use of the EU internal market, and the ECJ has confirmed they can operate freely across EU borders.

## **The Stauffer principle**

For example, in the German *Stauffer* case (C-386/04), the ECJ concluded, in its decision of 4 September 2006, that it is contrary to the free movement of capital that a foreign charitable foundation with limited liability to tax in Germany, unlike a German charitable foundation, is not entitled to exemption from corporation tax. However, the unequal treatment regarding the tax exemption only constitutes a restriction of Article 56 of the EC Treaty if both foundations are in a comparable situation, i.e., the foreign foundation is recognised as a charitable entity according to the host State.

## **Implications for charities**

The implications are enormous but so far have not been fully recognised. As tax exemptions and tax concessions exist in almost all EU Member States, charitable organisations with cross-border activities or investments can rely on beneficial rules usually designed only for domestic NFPOs. The request for equal treatment requires, however, that the organisation fulfils the technical requirements for charitable organisations in the host State. A further example of the consequences of the "Stauffer principle" can be seen in the

*Jundt* case (C-281/06), where Germany had to grant the same tax allowances to a university teacher rendering his services, whether in Germany or in a university of another Member State.

## **Dividends and tax exemption**

NFPOs may also benefit from this development in terms of their wealth management, specifically the taxation of dividends distributed by foreign corporations. A domestic charitable organisation which qualifies as a charity under domestic tax law is usually tax exempt with regard to dividends obtained from (portfolio) investments in domestic corporations. This also includes exemption from domestic withholding tax. A precondition is that the holding of the investment is not regarded as being part of the business activities of the organisation. However, this would only be a very exceptional case as the holdings of the shares are normally not treated as business activities but as part of the personal income source and thus regarded as tax exempt.

In contrast to that situation, an organisation having its tax residence in another EU Member State and which, apart from its residence, is comparable to a domestic charity, is denied the tax exemption granted to domestic charities. Due to the fact that the foreign charitable organisation qualifies as a charity under the regulations in its home country and is thus tax exempt there, the domestic withholding tax becomes a genuine cost for the organisation. Other relevant cases are pending before national courts and it is likely that the ECJ will apply its *Stauffer* principle if the NFPOs are in a comparable situation. Finally, whether or not individuals or companies can deduct donations to foreign NFPOs from their national tax base remains to be seen and will be decided by the ECJ in the near future in the *Persche* case (C-318/07).

*For further information, please contact Klaus Eicker in Munich (Klaus.Eicker@de.ey.com) or your usual Ernst & Young contact.*

# Direct tax

## **Direct tax country updates - Belgium, Finland**

### **Country updates**

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

#### **Belgium**

##### **Participation exemption**

On 8 May 2008, Advocate General (AG) Eleanor Sharpston issued her opinion in the *Cobelfret* case (C-138/07), regarding the compatibility of the Belgian participation exemption regime with the Parent-Subsidiary Directive.

Under the current Belgian dividend participation exemption regime, the exemption is not guaranteed if the parent company, receiving the dividends, incurs a loss or realises profits which are lower than the amount of the dividend received, i.e., the balance of the participation exemption cannot be carried forward to the next assessment years, which results in a definite loss of the (excess) dividend participation exemption.

According to the AG, Belgium does not provide for a true exemption system because it subjects the exemption (of dividends from tax) to a condition not envisaged by the Directive, i.e., available taxable profits. She states that Belgium hereby introduced a restrictive measure which is not allowed. AG Sharpston does not accept any of the three arguments set forth by Belgium, namely that the existing method leads to the same result as the imputation method; that the term "exemption" does not imply an effect on the amount of losses to be carried forward; and that the Belgian legislation is in accordance with the objective of Article 4(1) of the Directive.

AG Sharpston was also of the opinion that, if the ECJ rules that the Belgian dividend exemption deduction system is contrary to the Directive, the ECJ should not limit the effects of that ruling in time. According to her, Belgium has not made any attempt to demonstrate that there would be a risk of serious economic repercussions that might justify limiting the temporal effects of the ruling.

This means that if the ECJ follows the opinion of the Advocate General (which it usually does) and rules that the Belgian regime is contrary to the Directive, and if the ECJ also follows the AG's opinion regarding the limitation in time, Belgian companies with excess dividend participation exemption could still claim the application of the exemption.

#### **Finland**

##### **Withholding tax on non-residents**

On 8 April 2008, the Finnish Supreme Administrative Court ruled in case KHO:2008:23 on the taxation of a non-resident individual receiving a dividend from a Finnish unlisted company. The case was decided in favour of the taxpayer based on European law, without referring the matter to the ECJ.

A UK resident individual held 35% of the shares in a Finnish unlisted company. Under Article 11 of the Finland-UK double taxation treaty (DTT), dividends are generally exempt from withholding tax in the source state. However, in the case of individuals, Article 6 of the Finland-UK DTT limits the relief so that it does not apply to the income that is not remitted to the UK and, therefore, is not subject to tax therein. In the case at hand, the dividend was not remitted to the UK and, consequently, the Finland-UK DTT did not prevent Finland from imposing a withholding tax of 28% under its domestic tax law on the dividend received by the UK individual.

However, the taxpayer claimed that the tax treatment resulting from the application of domestic tax law would be contrary to EC law and, in particular, Articles 18, 43 and 56 of the EC Treaty, since the corresponding dividend for a resident individual would be treated as tax free within certain limits.

The Supreme Administrative Court agreed with the taxpayer and ruled that, under Articles 18 and 56 of the EC Treaty, the dividend received by the UK individual had to be exempted from taxation in the same way as a dividend received by a resident taxpayer.

## France

### **Article 4(2) of the Parent-Subsidiary Directive**

Following AG Sharpston's opinion released on 24 January 2008 (see *EU tax news*, March/April 2008), the ECJ issued its judgment on 3 April 2008 in the case of *Banque Fédérative du Crédit Mutuel v Ministre de l'Économie, des Finances et de l'Industrie* (C-27/07). The ECJ decided that a provision such as Article 216 of the French tax code, according to which a company receiving dividends which benefit from the parent-subsidiary exemption must include in its corporate income tax base 5% of the tax-exempt dividends received, including attached tax credits, is not contrary to the Parent-Subsidiary Directive. Indeed, the ECJ decided that dividends effectively received and related tax credits compensating for foreign withholding taxes should be considered as "profits distributed by the subsidiary" within the meaning of Article 4(2) of the Parent-Subsidiary Directive.

The ECJ rejected the French Supreme Tax Court's view that Article 7(2) may preclude taking into account the tax credits attached to the tax-exempt dividends when calculating the 5% non-deductible portion, since it might affect the tax neutrality of cross-border distributions of dividends when the tax credits may not be offset. The ECJ held that:

- ▶ the absence of neutrality derives from the possibility granted by the Parent-Subsidiary Directive to some Member States to levy a withholding tax
- ▶ taking into account the tax credits when calculating the 5% non-deductible portion does not fall within the scope of Article 7(2) of the Directive which provides that the application of domestic or agreement-based provisions designed to eliminate or reduce economic double taxation of dividends, in particular provisions relating to the payment of tax credits to the recipients of dividends, shall not be affected by the Directive.

### **Disposal of shares qualifying as substantial participation**

Pursuant to Section 244 bis B of the French Tax Code, and depending on the applicable DTT, capital gains realised by non-resident individuals or companies on the sale of shares may be subject in France to an 18% tax (16% before 2008) in cases where the shares qualify as a substantial participation (i.e., the shares represent more than 25%

of the financial rights in the subsidiary at any time during a five-year period preceding the sale).

However, French resident companies may benefit from the long-term capital gain regime in respect of the sale of shares which (i) qualify as investment securities under French regulations and (ii) have been held for two years or more. In such a case, the long-term capital gain realised is subject to taxation at the following rate:

- ▶ 15% for sales realised in fiscal years beginning on or after 1 January 2005
- ▶ 8% for sales realised during fiscal years beginning on or after 1 January 2006
- ▶ 0% for sales realised during fiscal years beginning on 1 January 2007 and thereafter, which include a portion equal to 5% of the tax-exempt capital gains added back to the company's income subject to the normal corporate income tax rate (i.e., 33.33% plus additional contributions).

Aware of the potential discriminatory treatment of sales of shares realised by companies resident in EU or EEA Member States, the French tax authorities have provided such companies with the possibility of claiming for a refund of the tax paid on the grounds of Article 244 bis B and the applicable tax treaty in excess of what would have been paid by a France-resident company (i.e., 33.33% of 5% of the amount of capital gains realised).

According to administrative guidelines 4 B-1-08, such a refund would be accepted if (i) the foreign company has its effective place of management in an EU Member State, or an EEA member state whose tax treaty with France includes an administrative assistance clause (i.e., it excludes Liechtenstein) and if (ii) the foreign company establishes that:

- ▶ it is liable to corporate income tax in its country of residence without being exempt;
- ▶ the tax due under Article 244 bis B has been effectively paid;
- ▶ the shares disposed of have been directly and continuously held for at least two years; and
- ▶ the sale was realised on or after 1 January 2006.

From a practical viewpoint, considering existing tax treaties between France and EU or EEA countries, the refund may only concern companies resident in EU or EEA

## **Direct tax country updates - France (continued), Germany, Hungary**

countries whose tax treaty with France grants France the right to tax capital gains deriving from substantial participations (e.g., Austria, Bulgaria, Cyprus, Hungary, Italy, Malta, Spain, Sweden).

### **Germany**

#### **Draft German Tax Act 2009**

On 28 April 2008, Germany's Ministry of Finance issued a first draft of a Tax Act 2009. One of the main aims of the draft is to bring German tax law into line with EC law. In this respect, the following four areas would be most affected:

(1) Treatment of non-resident taxpayers.

- ▶ Following the ECJ decision in the *Jundt* case (C-281/06), expense allowances for secondary activities as training supervisor, instructor or educator or for comparable secondary activities, for secondary artistic activities or for second jobs caring for the elderly, ill or handicapped persons for or on behalf of a national public-law legal person or a body which is for the promotion of the public good or of charitable or ecclesiastical purposes will no longer be limited to activities regarding domestic entities but extended to activities regarding entities established in EU/EEA Member States.
- ▶ Following the decision in the *Gerritse* case (C-234/01), the draft suggests the same tariff tax rules for both resident and non-resident taxpayers.
- ▶ Following the *Scorpio* case (C-290/04), non-resident taxpayers will be able to deduct business-related expenses incurred in connection with their domestic activities.
- ▶ Following the *Schwarz* case (C-76/05), school fees for private non-domestic schools comparable to German private schools will be deductible according to specific conditions. In the coming years, however, these benefits (i.e., for both domestic and foreign private schools) will be phased out.

(2) In compliance with the ECJ decision in the *Stauffer* case (C-386/04), both domestic and foreign non-profit organisations will be treated in the same way as regards their German income. This means that if non-profit organisations fulfil certain conditions for a tax exemption stipulated by German tax law, their domestic income will be exempt from corporate income tax.

(3) Within multinational groups, bookkeeping and recording activities are increasingly transferred to foreign shared service centres in order to reduce costs. These activities shall, for the first time, be performable outside Germany.

However, relocation of the bookkeeping will be limited to the EU/EEA Member States (except for Liechtenstein). Note that the relocation applies only to data processing. "Paper bookkeeping" has to stay in Germany in order to enable a possible VAT audit to be carried out. The change comes into force the day after publication of the 2009 Tax Act.

(4) The draft Act also suggests several changes in the treatment of family foundations with management or seat in one of the EU/EEA Member States.

### **Hungary**

#### **Incentives for research and development activities**

Current Hungarian tax law grants tax base deductions in connection with the following research activities - basic research, applied research or experimental development (collectively known as "R&D" activities). Further allowances are available if the R&D activity is physically carried out at certain places. Under Hungarian tax law effective until 31 December 2007, R&D activities performed on premises managed by a research institution founded by a Hungarian institution of higher education or by the Hungarian Academy of Sciences were treated more favourably than R&D activities performed on similar premises located abroad.

As a result, these provisions are likely to have discouraged Hungarian companies and entrepreneurs from carrying out their R&D activities in other EU Member States or EEA/EFTA countries. It is also possible, therefore, that the free provision of services enshrined by the EC Treaty was also violated by Hungarian legislation.

Accordingly, the Hungarian Parliament has now amended the legislation so that, as of 1 January 2008, R&D activities performed under similar circumstances in other Member States of the EU or the EEA have been given equal status with domestic situations.

Meanwhile, the European Commission has begun an infringement procedure against the Hungarian regime and, on 3 April 2008, published its opinion on the matter. However, since the Hungarian legislation

## **Direct tax country updates - Hungary(continued), Netherlands**

has already been amended to comply with European law, the Commission procedure will probably be ended soon.

### **Netherlands**

#### **Non-deductibility of debt under Dutch inheritance law**

On 13 March 2008, AG Mazák issued his opinion in the *Arens-Sikken* case (C-43/07). This case concerns the Dutch inheritance tax due upon an inheritance of Dutch real estate by a taxpayer living in Italy. According to the last will of the deceased, the taxpayer was obliged to pay, on a proportionate basis, a sum of money representing part of the value of the Dutch real estate to each of his four children. Based on Dutch inheritance law, this obligation could not be deducted from the tax base, i.e., the value of the Dutch real estate inherited by the taxpayer. The Dutch Supreme Court has asked the ECJ to decide whether this is compatible with the free movement of capital. The AG has now answered this question in the negative.

According to the AG, the Dutch rule constitutes a forbidden restriction of the free movement of capital, since it would not apply if the real estate had been inherited from a Dutch resident. The fact that the Member State of residence of the deceased may grant relief by way of a tax credit does not alter that conclusion.

#### **Domestic and foreign charities and inheritance tax**

On 21 March 2008, the Dutch Supreme Court decided that Article 56 of the EC Treaty prohibits the Netherlands from differentiating between domestic and foreign charities in the field of inheritance tax. The case, in which Ernst & Young litigated, was as follows.

In 2002, a UK charity received an amount of money under the law of succession from the estate of a deceased woman who was resident in the Netherlands at the time of her death. Besides this UK charity, two Dutch charities received amounts of money from the same estate. These two Dutch charities had to pay 11% inheritance tax. However, the tax assessment of the UK charity was based on a different tax rate, which resulted in taxation totalling about 50% of the amount received.

The UK charity applied for the same tax rate of 11% as was applicable to the Dutch charities, but this was refused by the Dutch tax authorities.

The Dutch Supreme Court finally decided that this difference between domestic charities and foreign charities was in conflict with EC law (under Article 56 of the EC Treaty). The fact that UK tax law is treating foreign (e.g., Dutch) charities differently compared to domestic charities does not constitute a justification, because Article 56 of the EC Treaty provides in itself for reciprocity in this respect. The argument that the effectiveness of tax audits could be seriously compromised if the acquiring charity resides abroad, cannot constitute a justification either.

According to the Dutch Supreme Court, the tax authorities are free to require a charity abroad that wishes to be considered eligible for the favourable tax rate to submit evidence that can be used to verify that the said charity is a charity within the meaning of the Dutch tax law.

This decision is important, not only because it is one of the rare decisions in which a Supreme Court applies EU law in favour of the taxpayer without posing preliminary questions to the ECJ, but also because this kind of discrimination can be found in other EU countries. Note that the Netherlands abolished this discrimination with effect from 1 January 2008.

#### **Additional tax assessment for foreign sourced income**

The regular period for imposing an additional tax assessment in the Netherlands is five years. This period starts at the time the tax debt is originated (usually December 31), and is extended with the extra time the taxpayer has been given to file the tax return. However, the aforementioned period is extended to twelve years if (an element of) the income or profit of the taxpayer has accrued outside the Netherlands.

On 21 March 2008, the Dutch Supreme Court addressed several preliminary questions to the ECJ in relation to the extended period for imposing an additional tax assessment. These concern two legal proceedings, one of which was litigated by Ernst & Young.

One case concerns a taxpayer which held a bank account with a Luxembourg financial institution between 1993 and 2001. The taxpayer did not include its credit balance with the Luxembourg bank in its Dutch tax assessment, nor did it report any income from this source. Luxembourg applied a policy of banking secrecy in the relevant period. In October 2000, the Belgian tax authorities informed the Dutch tax

## **Direct tax country updates - Netherlands (continued), Norway**

authorities about the credit balance held by the Dutch taxpayer with the Luxembourg bank. In 2002, the Dutch tax authorities levied an additional tax assessment over the period 1993-2001, including fines.

The other case concerns an heir of a former taxpayer, who herself informed the Dutch tax authorities in 2003 of a credit balance held by her former husband with a German financial institution in the period 1993-1997. Again, the Dutch tax authorities imposed an additional tax assessment, applying the extended period.

The Dutch Supreme Court ruled that the extended period for imposing an additional tax assessment infringes Article 49 (freedom to provide services) and Article 56 (freedom of capital movements) of the EC Treaty. However, the Supreme Court is of the opinion that this infringement could be justified by the effectiveness of fiscal supervision, and that the relevant Dutch legislation does not seem disproportional.

However, since it is not beyond reasonable doubt that the extended period for imposing an additional tax assessment complies with EC law, the Dutch Supreme Court has asked the ECJ whether:

- ▶ the freedom to provide services and the freedom of capital movements do not prohibit a Member State, in circumstances where (income from) foreign bank accounts have not been reported to the tax authorities of that State, from applying a legal provision which, to compensate for a lack of effective fiscal supervision, provides a period of twelve years to impose an additional tax assessment, whilst with respect to (income from) Dutch bank accounts, in which case effective fiscal supervision is possible, a period of five years is applicable
- ▶ it matters for the answer to the first question if the bank account is held in a country which applies a policy of banking secrecy
- ▶ if the first question is answered affirmatively, Articles 49 and 56 EC Treaty prohibit the imposing of a fine, which amount thereof is calculated in proportion to the amount of the additional tax assessment.

## **Norway**

### **Credit rules incompatible with freedom of establishment**

On 7 May 2008, the EFTA Court decided in the *Seabrokers AS v Norway* case (E-7/07) that the Norwegian rules for calculating the maximum credit for tax paid in a foreign state is incompatible with the freedom of establishment.

The plaintiff, a Norwegian private limited liability company called Seabrokers AS, operated a real estate business in Norway, and had a UK branch whose only business activity was ship broking. It had substantial debt related to the Norwegian real estate business, but none related to the branch.

According to the Norwegian credit rules, the maximum credit may not exceed the estimated Norwegian tax on the income derived in the foreign state. Interest expenses, which are deductible in Norway, have to be attributed to both Norwegian and foreign income in proportion to where the net income of the company is earned (the "indirect allocation" method), irrespective of the purpose for which the debt was incurred (the "direct allocation" method). The same calculation method was applied to group consolidation payments up until the 2007 income year.

The plaintiff used the direct method in its accounts and tax declarations, and had attributed all the interest expenses to the Norwegian income, which the expenses correctly related to.

However, the Norwegian tax authorities decided to apportion the deductible expenses in accordance with the principle of net income taxation as mentioned above, meaning that a portion of the expenses were attributed to the UK branch. As a result, the maximum credit allowance for UK tax paid was reduced.

The EFTA Court states that in calculating the maximum credit allowance, the attribution of debt interest, related solely to a taxpayer's business in the home state (Norway), to the income of a branch situated in another EEA state (the UK) constitutes a restriction on the freedom of establishment.

It is important to note that the judgment relates solely to circumstances where the expenses are linked to the business activities in the company's home state. It is unclear if the judgment may be applied where the expenses are also linked to the foreign branch. Norwegian companies that have not been granted full credit for foreign

## **Direct tax country updates - Norway (continued), Portugal, Spain**

tax, due to the allocation of interest expenses (and group contributions prior to 2007) outlined above should consider claiming a refund from the Norwegian tax authorities.

### **Portugal**

#### **Treatment of dividends paid to foreign pension funds**

Under Portuguese tax law, dividends received by domestic pension funds are exempt from tax in Portugal, but dividends paid to foreign pension funds (within the EU or in the EEA/EFTA countries) are subject to a 25% withholding tax.

The higher tax on dividends paid to foreign pension funds may dissuade such funds from investing in Portuguese companies. This situation may result in a restriction of the free movement of capital under Article 56 EC and Article 40 EEA. In the case of a controlling participation by a foreign pension fund, it may also result in a restriction of the freedom of establishment, protected by Article 43 EC and Article 34 EEA.

Further to the letter of formal notice (the first step of the infringement procedure of Article 226 of the EC Treaty) sent to Portugal in 2007, the European Commission has now decided to send a "reasoned opinion" (the second step of the infringement procedure) concerning the rules above, under which dividends paid to foreign pension funds are taxed more heavily than dividends paid to domestic pension funds. If the Portuguese Government does not take the necessary steps to comply with its request, the Commission may decide to take Portugal to the ECJ.

### **Spain**

#### **Treatment of dividends paid to foreign pension funds**

The European Commission has also sent a reasoned opinion to Spain about the rules under which dividends paid to foreign pension funds are taxed more heavily than dividends paid to domestic pension funds.

Spain exempts its pension funds from tax on their income, and enables them to claim back any Spanish withholding tax that is applied on the dividends that they receive. In practice, therefore, Spanish pension funds receive tax-free dividends. In contrast, Spain levies a withholding tax of 18% on dividends paid to pension funds

established elsewhere in the EU or in the EEA/EFTA countries (Iceland, Norway and Liechtenstein).

Pension funds may not always benefit from the lower dividend withholding tax provided in the tax treaties but, even if they do, the result is that the dividends paid to foreign pension funds are more heavily taxed than dividends received by Spanish pension funds. The Commission considers that this discriminatory tax treatment is contrary to the fundamental freedoms of the EC Treaty.

#### **Tax deduction for R&D activities abroad**

On 13 March 2008, the ECJ gave its judgment in the *Commission v Spain* case (C-248/06), which was in line with the *Laboratoires Fournier* case (C-39/04).

The Spanish case analysed the Spanish tax deduction for expenses connected with research, development and technical innovation activities. This tax deduction is available for expenses incurred outside Spain only if the research activity is mainly done in Spanish territory. The deduction is also available for research activities that are subcontracted, but with universities and public research centres that comply with Spanish legislative requirements, one of which is to carry out their activities in Spain. Hence, in common with the *Laboratoires Fournier* case, the ECJ found that the Spanish tax deduction constituted a breach of the EC Treaty because it discriminated against other European providers of research, development and technical innovation services.

According to the ECJ, the limitations provided by the Spanish tax law cannot be justified on the ground that there is a risk of a double tax deduction of the costs, because, according to the ECJ, nothing prevents Spain from requiring proof that the costs have not been considered as tax deductible elsewhere.

In line with its decision in the *Stauffer* case (C-386/04), in order to guarantee the seriousness of the centres, the ECJ considers that Spain should allow the tax deduction for the costs of subcontracting the R&D activities with universities and research centres that comply with other EU States' legislative requirements.

Although the temporary effects of this judgment are still to be determined, on the basis of this ECJ decision, certain European groups could claim a tax deduction for the costs of research and development incurred in another EU country, or of subcontracting research activities to a university or

research centre of an EU Member State other than Spain.

## **Direct tax country updates - Spain (continued)**

### **State Aid and the Basque corporate tax system**

On 8 May 2008, AG Juliane Kokott gave her opinion in the case of *Unión General de Trabajadores de La Rioja* (C-428/06). The Tribunal Superior de Justicia del País Vasco had requested a preliminary ruling from the ECJ on the interpretation of the concept of State aid with respect to regional tax measures. More precisely, the Tribunal wished to know under which circumstances the tax measures adopted by infra-State entities, which are more beneficial than the tax measures applicable in the rest of the State, can be considered as selective measures in the sense laid down by Article 87.1 of the EC Treaty.

The AGI, reasoning along the lines of the ECJ judgment in the *Azores* case (C-88/03), concluded that these "regional" tax measures do not constitute State aid if the infra-State entity adopting the tax measure enjoys sufficient autonomy in the exercise of its legislative powers in tax matters. Such autonomy implies that:

- ▶ the infra-State entity has institutional autonomy
- ▶ the central government does not have the legal possibility to decisively interfere in the procedure for the adoption of the territorial tax laws (formal autonomy)
- ▶ the infra-State entity enjoys sufficient autonomous powers to enact fiscal legislation in order to pursue its own economic policy goals (material autonomy)
- ▶ the infra-State entity bears the economic consequences of the reduction in tax revenues resulting from the favourable tax measures (economic autonomy).

Although the final decision on whether the Basque corporate tax system constitutes State aid lies with the Tribunal Superior de Justicia del País Vasco, the analysis of AG Kokott suggests that, in accordance with the interpretation above, the Basque territories enjoy sufficient autonomy to enact their own tax legislation.

# Indirect tax

## Latest EU developments

### VAT: Deduction of input tax

On 13 March 2008, the European Court of Justice delivered its decision on the *Securenta* case (C-437/06) brought forward by the Finance Court of Lower Saxony (*Niedersächsisches Finanzgericht*) in Germany, with regard to the interpretation of Articles 2(1) and 17(5) of the Sixth VAT Directive. The German court sought to clarify:

- ▶ the method of determining the entitlement to deduct input tax in the case of a taxable person who simultaneously engages in an economic activity and a non-economic activity
- ▶ if such a deduction was allowed only to the extent that that person's expenditure is correctly to be attributed to the economic activity, whether an "investment formula" or a "transaction formula" would be appropriate for the purposes of apportioning the input tax between the economic activity and the non-economic activity.

### Background

*Securenta* (*Securenta Göttinger Immobilienanlagen und Vermögensmanagement AG*) was active in the field of acquiring, managing and selling real estate, securities, financial holdings and investments of all types. It acquired the capital necessary for that business by means of the issue of shares and atypical silent partnerships (*atypisch stille Beteiligungen*). Members of the public contributed capital to the applicant, which it then invested.

When, in 1994, the Göttingen Tax Office decided not to attribute an amount of input tax to specific and thus non-deductible output transactions, *Securenta* brought the case to the Finance Court of Lower Saxony. The latter supported the decision of the Göttingen Tax Office and, following a successful appeal, the case was referred to the ECJ.

### The ECJ's decision

With regard to the first question, the acquisition and holding of shares, according to the ECJ, cannot solely sustain an economic activity within the meaning of the Sixth VAT Directive. The mere acquisition of financial holdings in other undertakings does not account for

the exploitation of property for the purpose of obtaining income therefrom on a continuous basis. Consequently, if the acquisition of financial holdings in other undertakings does not in itself constitute an economic activity within the meaning of the Sixth VAT Directive, it can be deduced that the same should be true for the opposite activity - particularly the selling of financial holdings in other businesses. By contrast, transactions affecting securities may come within the scope of VAT but are exempted from it.

The ECJ further held that a partnership that admits a partner in return for payment of a cash contribution does not effect, *vis-à-vis* that partner, a supply of services within the meaning of Article 2(1) of the Sixth VAT Directive. The same conclusion was drawn by the ECJ regarding the issue of shares for the purpose of raising capital. In view of the fact that the applicant - regardless of its rights as shareholder or partner - is neither directly nor indirectly involved in the management of the companies whose financial holdings it acquires, holds or transfers, the applicant's activities do not fall to be regarded as economic activity.

Taking these factors into account, the ECJ decided that the deduction of input tax on the expenditure connected with the issue of shares or silent partnerships is allowed only to the extent that the expenditure is correctly attributed to that person's economic activity, in circumstances where such a taxable person simultaneously engages in an economic activity and a non-economic activity.

With regard to the second question, the ECJ concluded that such determination should lie within the discretion of the respective Member State, which, however, should comply with certain principles included in the Sixth VAT Directive.

### VAT: Exemption for insurance brokers

On 3 April 2008, the ECJ delivered its decision on the *Beheer* case (C-124/07). In this case, the ECJ had to deliberate on the question of whether the relationship between an insurance broker or agent and the parties to the insurance or reinsurance contract prevents the service provided by the insurance broker or agent from being

exempt from VAT under Article 13B(a) of the Sixth VAT Directive.

#### *Background*

J.C.M. Beheer BV (Beheer), acted as a sub-agent on behalf of VDL Polisassuradeuren BV (VDL) a company incorporated under Dutch law which itself acts as an insurance broker and insurance agent. The activities which Beheer carried out on behalf of VDL concerned the conclusion of insurance contracts, the processing of transfers of insurance policies, the issue of such policies, the payment of commissions and provision of information to the insurance company and policy holders. It also arranged new insurance policies on its own initiative. Beheer got a commission equal to 80% of the commission paid to VDL for concluding insurance contracts. Following imposition of a supplementary turnover tax assessment and legal proceedings in the Regional Court of Appeal (*Gerechtshof te's-Hertogenbosch*), the case was referred to the ECJ.

#### *The ECJ's decision*

Before delivering its opinion, the ECJ had to determine whether the services provided by Beheer were related to insurance and reinsurance transactions performed by insurance brokers and insurance agents within the meaning of Article 13B(a) of the Sixth VAT Directive. The ECJ gives a clear-cut view on the scope of the insurance exemption: it does extend to sub-intermediaries / sub-agents. The fact that there is only an indirect relation with the insurer (i.e., via another intermediary) does not affect the availability of the VAT exemption for insurance transactions.

Following an analysis of relevant cases, *Taksatorringen* (C-8/01) and *Arthur Andersen* (C-472/03), and the provisions of Article 13B(a), the ECJ concluded in favour of Beheer, arguing that the insurer's or agent's relationship to the (re) insurance broker or agent, even if considered as an indirect relationship, should not prevent its use of the VAT exemptions foreseen in Article 13B(a).

## **Country updates**

### **Denmark**

#### **Taxation on leased vehicles**

On 6 March 2008, the ECJ delivered its decision in the *Nordania* case (C-98/07). In this case, the ECJ had been requested to rule on the exclusion of certain amounts of turnover attributable to the supplies of capital goods used by the taxable person for the purposes of his business and the notion of "capital goods used by the taxable person for the purposes of his business". The case concerned vehicles purchased by a leasing company to be leased and later sold when the respective leasing contracts came to an end.

#### *Background*

*Nordania Finans A/S* and *BG Factoring A/S* are legal successors to *BG Erhvervsfinans A/S* which from 1995 to 1998 was dealing with the financial leasing of vehicles, an activity liable to VAT. *Erhvervsfinans* was also involved in the provision of financial services, which was VAT-exempt. It thus had to calculate the proportion of its overall costs to which the partial deductibility of VAT related. For this purpose, *Erhvervsfinans* took into consideration the turnover from the sale of vehicles upon termination of the respective lease contracts. The company argued that those vehicles were not "capital goods used by the taxable person for the purposes of his business" within the meaning of Article 19(2) of the Sixth VAT Directive. The Danish tax authorities took a different view. Following a series of legal actions, *Nordania Finans* and *BG Factoring*, which had meanwhile succeeded *Erhvervsfinans*, referred the case to the Danish Supreme Court (*Højesteret*), which in turn addressed the matter to the ECJ.

#### *The ECJ's decision*

The ECJ concluded that Article 19(2) of the Sixth VAT Directive needs to be interpreted as meaning that the notion of "capital goods used by the taxable person for the purposes of his business" does not include vehicles which a leasing undertaking purchases with a view, as in this case, to leasing them and subsequently selling them when the respective leasing contracts end. This is because the sale of such vehicles at the end of those contracts is an integral part of the usual business activities of that undertaking.

## Indirect tax country updates - Germany, Italy

### Germany

#### Water supplies

On 3 April 2008, the ECJ delivered its judgment in the *Zweckverband zur Trinkwasserversorgung und Abwasserbeseitigung Torgau-Westelbien* case (C-442/05) on whether or not a reduced VAT rate should apply to the connection of a building's water system to the water supply network ("mains connection").

#### Background

Zweckverband oversees the supply of drinking water and disposal of sewage on behalf of a number of towns and municipalities in Germany. In addition, it is responsible for the collection, piping, treatment and supply of drinking water to its customers, i.e., the owners of buildings connected to the water supply network. Within this framework of activities, it installs mains connections at the request of its customers, for which it receives a single fee corresponding to the cost of that work. The mains connection remains the property of Zweckverband.

Following various legal proceedings involving different German courts and the Federal Ministry of Finance, the ECJ was asked to decide whether the connection of the water distribution network to a property owner's installation (the so-called "household connection") by a water supply undertaking for a separately calculated fee comes under the heading of "the supply of water" and "water supplies" within the meaning of the Sixth VAT Directive.

#### The ECJ's decision

The ECJ considered that Article 4(5) of the Sixth VAT Directive should be interpreted as meaning that the laying of a mains connection which comprises the installation of piping, permitting the connection of a building's water system to the fixed water supply network, forms part of the supply of water, foreseen in the aforementioned Article, so that a body governed by public law acting as a public authority is a taxable person in respect of that transaction.

Furthermore, it concluded that Article 12(3)(a) of the same Directive should be interpreted as meaning that the laying of a mains connection, which consists in the installation of piping, permitting the connection of a building's water system to the fixed water supply network, forms part of water supplies. Finally it concluded that Member States may apply a reduced VAT

rate to the laying of mains connections, provided that they comply with the principle of fiscal neutrality.

### Italy

#### The abuse of law principle

The ECJ has issued several VAT-related decisions that provide significant guidance on the abuse of law principle. Reference is made to the *Halifax* case (C-255/02) in which the ECJ clearly stated that an abusive practice exists to the extent that the transactions concerned, notwithstanding formal application of the conditions laid down by the relevant provisions of the Sixth VAT Directive and of national legislation transposing it, result in the accrual of a tax advantage the grant of which would be contrary to the purpose of those provisions. Moreover, a number of objective factors should make it clear that the essential aim of the transactions concerned is to obtain a tax advantage.

In the *Party Service* case (C-425/06), brought to the attention of the ECJ by the Italian Supreme Court, another decision was issued on the abuse of law principle for VAT purposes. In the *Party Service* case, the Italian Supreme Court posed the following question to the ECJ:

"Does the concept of abuse of rights defined in the judgment of the Court of Justice in [*Halifax and Others*] as 'transactions, the essential aim of which is to obtain a tax advantage', correspond to the definition 'transactions carried out for no commercial reasons other than a tax advantage', or is it broader or more restrictive than that definition?"

The ECJ referred to the *Halifax* case, emphasising that an abusive practice can be held to exist where:

- ▶ the transactions concerned result in the accrual of a tax advantage the grant of which would be contrary to the purpose of the Sixth VAT Directive provisions; and
- ▶ it is apparent from a number of objective factors that the essential aim of the transactions concerned is to obtain a tax advantage.

The answer of the ECJ to the question posed by the Italian Supreme Court was that there could be an indication of abusive practice when the accrual of a tax advantage constitutes the principal aim of the transaction or transactions at issue. Therefore, even if there is an economic aim

## **Indirect tax country updates - Italy (continued), Slovakia**

together with a prevailing tax advantage aim, the transaction can be considered as abusive.

In its decision n. 8772 of April 4 2008, the Italian Supreme Court stated that the abuse of law principle, as indicated by the ECJ, is applicable also for direct taxes purposes and, therefore, Italian tax authorities are not bound by transactions realised with the main aim of obtaining a tax advantage. In this situation the taxpayer has to prove that the transaction was carried out for effective business reasons.

This conclusion is quite important because the Italian tax system does not include any general anti-avoidance provision, other than a provision aiming to scrutinise specific transactions (such as mergers, demergers, etc). The case ruled upon by the Italian Supreme Court concerned a dividend washing operation which was not covered by the Italian anti-avoidance provision.

Based on the decision of the Italian Supreme Court, the Italian tax authorities might be able to challenge any transaction by stating the presence of an abuse of law.

### **Reverse charge mechanism**

On 8 May 2008, the ECJ delivered its decision in the *Ecotrade* joined cases (C-95/07 and C-96/07). The cases were referred to the ECJ following two disputes between Ecotrade SpA and the Italian tax authorities (*Agenzia delle Entrate - Ufficio di Genova*), concerning a number of recovery notices issued by the latter reassessing, for VAT purposes, tax returns submitted by Ecotrade for the tax years 2000 and 2001.

#### *Background*

In the tax years 2000 and 2001, Ecotrade, specialising in granulated blast furnace slag, synthetic gypsum and other materials, set up the transport of these materials from Italy to other EU Member States, using operators based outside Italy.

In the invoices issued by those operators for services supplied to Ecotrade, the services are described either as "chartering of the vessel" or "shipping". However, the invoices did not indicate the amount of VAT, and some of them stated that the transactions were exempt. Ecotrade, therefore, regarded the relevant transactions as being exempt from VAT. Accordingly, it recorded the invoices relating to those transactions only in the register of purchases and not in the register of invoices issued, and did so, on the basis of VAT exemption.

The VAT relating to those transactions was therefore not mentioned in the returns drawn up by Ecotrade for the tax years 2000 and 2001.

Following an inspection in 2004, the Agenzia took the view that the transactions in question were services in the intra-Community transport of goods subject to VAT, and that the reverse charge procedure was applicable to them, which, with the exception of one invoice, was not disputed by Ecotrade.

The Agenzia also found that Ecotrade had not complied with the accounting requirements relating to the reverse charge procedure because the invoices concerned had been recorded only in the register of purchases and not in the register of invoices issued.

The Agenzia reassessed for VAT purposes the tax returns submitted by Ecotrade for the tax years 2000 and 2001, claimed payment of undeclared taxes and imposed penalties. In addition, the Agenzia said that Ecotrade had lost its right to deduct VAT because it had not exercised that right within a period of two years from the time the VAT becomes chargeable. Further legal proceedings followed, culminating in referral to the ECJ.

#### *The ECJ's decision*

The ECJ ruled that Articles 17, 18(2) and (3) and 21(1)(b) of the Sixth VAT Directive do not preclude national legislation which lays down a limitation period for the exercise of the right to deduct, such as that at issue in *Ecotrade*, provided that the principles of equivalence and effectiveness are respected. It went on to say that the principle of effectiveness is not infringed merely because the tax authority has a longer period in which to recover unpaid VAT than the period granted to taxable persons for the exercise of their right to deduct.

## **Slovakia**

### **Excise duty reductions for transport sector**

In the context of EU policy on "clean transport", the European Commission has accepted measures introduced by the Slovak Republic to use excise duty reductions and exemptions to benefit railway and inland waterways transport.

#### *Background*

Since 1 May 2004, Slovakia has applied excise duty exemption with respect to fuel

## **Indirect tax country updates - Slovakia (continued), Spain**

used in inland waterway navigation and excise duty reduction with respect to fuel used in railway transportation. The measures are in line with the provisions of the Energy Taxation Directive (2003/96/EC). The period covered by the State aid scheme is ten years.

As railway and inland waterway transport do not allow for direct door-to-door delivery, they are exposed to a number of additional expenses, among which transshipment costs play the main role. At the same time, rail and inland waterway transport have much lower external costs in terms of accidents, greenhouse gas emissions and air pollution. Their use is, therefore, beneficial for society.

Both transport modes also have considerable spare capacity and can therefore play a role in diverting traffic away from the congested parts of the road networks. The Slovak Republic opted for excise duty exemptions and reductions to reduce the difference in costs faced by different transport modes. The Commission has decided that the proposed fiscal measures applicable to inland navigation and railway transportation are compatible with EU State aid rules.

### **Spain**

#### **VAT on barter transactions**

In April 2008, Spain received a "reasoned opinion" from the European Commission asking it to comply with the VAT rules applicable to barter transactions within a two-month deadline.

#### *Background*

The Commission has concluded that Spain is in breach of Community law in the way it applies rules to determine the taxable amount of VAT for barter transactions. Currently, in Spain, when a future building or part thereof is sold and paid for prior to its final construction, VAT is charged at the time the payment is realised, and the taxable amount is the amount actually paid. No additional VAT is charged at a later stage when, upon final construction, the building is delivered to the purchaser. This is in conformity with the Sixth VAT Directive.

Nonetheless, in the same situation, if the advance payment of the planned building is made in kind (for example, if the purchaser of the planned building pays by supplying a piece of real estate), the taxable amount for the purposes of VAT is different.

In that case, VAT is charged when the advance payment is made on the basis of the market value foreseen for the building once it has been constructed; if, once the construction is over, the market value of the building is higher than foreseen, a correction of the taxable amount initially calculated must be made and the purchaser of the building is requested to pay VAT on the difference.

The Commission thinks that the product supplied is identical in both transactions and the only difference is in the means of payment - a view supported by ECJ case law.

According to the ECJ, using different means of payment for acquiring a product cannot lead to a different VAT liability. Hence, the Commission has formally requested that Spain change its administrative practice to comply with the relevant rules.

# Contacts

Country	Direct tax Email/telephone	Indirect tax Email/telephone
Austria	Roland.Rief@at.ey.com +43 1 211 70 1257	Ingrid.Rattinger@at.ey.com +43 1 21170 1251
	Nina.Doralt@at.ey.com +43 1 211 70 1387	
Belgium	Steven.J.Claes@be.ey.com +32 2 774 9420	Danny.Claeys@be.ey.com +32 2 774 93 62
Bulgaria	Julian.Mihov@bg.ey.com +359 2 81 77 100	Emilia.Gabrovska@bg.ey.com +359 2 81 77 100
Cyprus	Maarten.Koper@cy.ey.com +357 25 209 722	Neophytos.Neophytou@cy.ey.com +357 25 209 706
Czech Republic	Jiri.Prokop@cz.ey.com +420 225 335 310	Jan.Capek@cz.ey.com +420 225 335 625
	Jana.Karaskova@cz.ey.com +420 225 335 248	
Denmark	Michael.Kirkegaard@dk.ey.com +45 3 587 2762	Flemming.Lind@dk.ey.com +45 3 587 2625
Estonia	Tonis.Jakob@ee.ey.com +372 6114 669	Tonis.Jakob@ee.ey.com +372 6114 669
Finland	Hannele.Liede@fi.ey.com +358 9 1727 7337	Leena.Aarila@fi.ey.com +33 01 55 61 14 72
France	Anne.Colmet.Daage@ey-avocats.com +33 1 5561 1305	Frederic.Ghidalia@ey-avocats.com +33 01 55 61 14 72
	Jerome.Ardouin@ey-avocats.com + 33 1 55 61 13 17	
Germany	Klaus.Eicker@de.ey.com +49 89 14331 12287	Christa.Breucha@de.ey.com +49 711 9881 15244
Greece	Vassilis.Vlachos@gr.ey.com +30 210 2886 399	Tassos.Anastasiadis@gr.ey.com +30 210 2886 592
Hungary	Denes.Szabo@hu.ey.com +36 1 451 8209	Robert.Heinczinger@hu.ey.com +36 1 451 8262
	Agnes.Claus@hu.ey.com +36 1 451 8394	
Iceland	Elva.Wilum@is.ey.com +354 595 2500	Elva.Wilum@is.ey.com +36 1 451 8262
Ireland	David.Fennell@ie.ey.com +353 1 221 2448	Breen.Cassidy@ie.ey.com +353 1 479 2104
Italy	Enrico.Ceriana@it.ey.com +39 028514222	Silvia.Confalonieri@it.ey.com +39 02 851 4559
Latvia	Ilona.Butane@lv.ey.com +371 7043 836	Egons.Liepins@lv.ey.com +371 7 043 890
Lithuania	Rasa.Pacenkienė@lt.ey.com +370 5 274 22 93	Irmantas.Misiunas@lt.ey.com +370 5 2742 307
Luxembourg	Marc.Schmitz@lu.ey.com +352 42 124 352	Yannick.Zeippen@lu.ey.com +352 42 124 362
	Anja.Taerner@lu.ey.com +352 42 124 542	
Malta	Chris.Naudi@mt.ey.com +356 2347 1440	Chris.Naudi@mt.ey.com +356 2347 1440
Netherlands	Ben.Kiegebeld@nl.ey.com +31 10 406 8507	Gijsbert.Bulk@nl.ey.com +31 10 8840 7115
Norway	Martin.Wikborg@no.ey.com +47 24 00 2242	Christin.Bosterud@no.ey.com +47 24 00 24 00
Poland	Jacek.Kedzior@pl.ey.com +48 22 557 7263	Krzysztof.Sachs@pl.ey.com +48 22 557 7262
Portugal	Antonio.Neves@pt.ey.com +351 21 791 2295	Filipa.Guedes@pt.ey.com +351 21 791 2040
	Vera.Figueiredo@pt.ey.com +351 21 794 9318	
Romania	Marius.Ionescu@ro.ey.com +40 21 402 4000	Jean-Marc.Cambien@ro.ey.com +40 21 402 4191

# Contacts

Country	Direct tax Email/telephone	Indirect tax Email/telephone
Slovak Republic	Stan.Jakubek@sk.ey.com +421 2 3333 9600	Juraj.Ontko@sk.ey.com +421 2 3333 9110
Slovenia	Robert.King@si.ey.com Tel: +386 1 5680 472	Marc.Van.Rijnsoever@si.ey.com +386 1 568 04 34
Spain	JoseLuis.Gonzalo@es.ey.com +34 91 572 7334	Javier.MartinMartin@es.ey.com +34 915 727 554
Sweden	Carl.Pihlgren@se.ey.com +46 8 520 595 22	Tomas.Karlsson@se.ey.com +46 8 520 592 47
Switzerland	Lionel.Noguera@ch.ey.com +41 58 286 5578	Philip.Robinson@ch.ey.com +41 58 286 3197
United Kingdom	David Evans (devans@uk.ey.com) +44 207 951 4246	Robert Crooks (rcrooks@uk.ey.com) +44 161 333 2815
Tax Desk New York	Jurjan.WoudaKuipers@ey.com +1 212 773 6464	Robin.Maxwell@ey.com +1 212 773 3350

Ernst & Young

Assurance | Tax | Transactions | Advisory

## About Ernst & Young

Ernst & Young is a global leader in assurance, tax, transaction and advisory services. Worldwide, our 130,000 people are united by our shared values and an unwavering commitment to quality. We make a difference by helping our people, our clients and our wider communities achieve potential.

Trading in the European Union (EU) is crucial to global business success for many multinational enterprises. But managing the impact of European law on 27 countries' different tax systems can prove a daunting challenge. Our EU tax professionals are based in every member state. Their insights and experience help you build proactive and integrated tax strategies that address EU tax opportunities and risks. It's how Ernst & Young makes a difference.

For more information, please visit [www.ey.com](http://www.ey.com).

Ernst & Young refers to the global organization of member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

[www.ey.com/tax](http://www.ey.com/tax)

© 2008 EYGM Limited.  
All Rights Reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

**EU Competency Group Leader**  
Matthias Roche

Tel: + 49 6196 996 26267  
Mobile: +49 160 939 26267  
[matthias.roche@de.ey.com](mailto:matthias.roche@de.ey.com)

**Group Coordinator**  
Simona Tesarova

Tel: + 49 89 14331 20050  
[simona.tesarova@de.ey.com](mailto:simona.tesarova@de.ey.com)