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In times of budget consolidation, tax administrations in Europe and across the globe are not only becoming more cooperative as the conclusion of tax information exchange agreements and the adoption of EU legislation on administrative cooperation proves but also inventive in exploring new forms of closer cooperation with taxpayers. Such efforts aim at raising tax revenues and preventing tax evasion and avoidance but also at improving taxpayer satisfaction and cost savings in the administration through quicker procedures and better allocation of staff.

Despite these common goals, the approaches taken and the burden or benefit they bring for taxpayer and tax adviser differ from country to country. CFE (Confédération Fiscale Européenne), the European umbrella organisation of tax advisers, has aimed at highlighting and comparing the situation in France, Germany, the Netherlands and the United Kingdom and discussing the future role of the three parties involved in a half-day conference on 1 December 2010.

The conference was hosted by the Düsseldorf Chamber and Association of Tax Advisers and attended by more than 90 participants from various European countries including a number of national tax administrations and EU Commission officials.

First speaker was Prof. Dr. Axel Pestke, CEO of Deutscher Steuerberaterverband (German Association of Tax Advisers). Axel Pestke reported on the planned risk management of the German fiscal administration. Although the tax administration had confirmed there were plans to introduce such system, no information on the criteria this system would apply had been communicated yet so assumptions had to be made on the basis of leaked information.

German companies will be obliged to submit electronic balance sheets as of 2012 which will enable tax authorities to apply an automated risk filter, identifying the cases to be assessed by a tax officer and automatically processing all other, inconspicuous data.

The planned risk management system would distinguish between object-based and subject-based risks. Object-based risks would be pre-defined risky situations (disposal or discontinuation of a business, purchase of a shell company or transfer of losses), significant changes from past tax returns and exceeding of defined thresholds.

Subject-based risks would relate to the “fiscal integrity” of a taxpayer including his past compliance and degree of cooperation (e.g. meeting of deadlines, payment behaviour, irregularities indicated in tax audit reports, voluntary declaration of liabilities).

Axel Pestke dismissed any ideas of including criteria unrelated to the behaviour of the individual client but based on purely statistical evidence like the likelihood that taxpayers from a certain geographical area were more or less compliant. Also, according to him, the legitimate use of procedural rights which includes the right to consult a tax adviser must not be considered suspicious behaviour. Where the law allows a tax adviser to defend a client in accordance with the law (which does not have to be identical to the interpretation of the tax administration), a tax adviser was an additional positive compliance factor. Individual assessment of more or less compliant tax advisers would have to be avoided.

Addressing the tax administration, Mr Pestke stressed that a spirit of partnership would require the administration to inform the taxpayer and his adviser about the risk indications of his particular case, however acknowledging that the administration had a legitimate interest not to fully reveal their criteria.

Chris Tailby worked until 2009 in the Anti-Avoidance Group of the UK tax administration HMRC and had been responsible for the implementation of Disclosure of Tax Avoidance Schemes (DOTAS). He explained that DOTAS had been in place in the UK since 2004 for income tax, corporation tax and capital gains tax and had since then triggered 3000 disclosures. These were estimated to have brought additional tax revenue of €13.8 billion, making DOTAS an important weapon in which HMRC continued to invest large amounts of resources.

An avoidance scheme was any arrangement that could be expected to give a tax advantage and this advantage was one of the main benefits of the arrangement. Furthermore, there was a number of hallmarks such as premium fees, off market terms or confidentiality from competitors. Avoidance schemes had to be disclosed by the promoter (the tax adviser) within five days after the scheme was made available to the client. Where there was no promoter or the promoter could not be obliged (as a lawyer) or easily reached (as he was based outside the UK), the user (client) had to disclose.

One of the recent focuses of HMRC were preventing marketed avoidance schemes designed for a larger number of users. All in all, awareness of HMRC anti-avoidance action in business reached 89%. Work on refining DOTAS kept taking place constantly.

Although HMRC regularly published warnings of non-acceptable schemes the criteria for assessing the acceptability of schemes were not made known. As Chris Tailby noted, HMRC was “playing the cards close to its chest”, trying to avoid the emergence of “safe”, white-listed avoidance schemes. “Uncertainty is one of the tools to keep businesses in check,” said Mr Tailby.

From the industry’s point of view, Chris Tailby noted that DOTAS resulted in additional compliance effort on the side of the tax adviser. This was not seen as a problem by HMRC as taxpayers were free to pursue a more or less risk-susceptible strategy with regard to avoidance. Businesses welcomed that the
abolishment of avoidance schemes had done away with competitive advantages of businesses using such schemes.

Jean-Pierre Lieb from the French Ministry of Finance went back in history when explaining the traditionally difficult relationship between taxpayers and the French tax administration which had led to a highly formalised process and rigorous controls with little trust in the taxpayer’s willingness to comply.

A number of reforms had led to a softer approach of the tax administration: Today, if minor mistakes in tax returns were found, the administration would suggest the taxpayer to amend his tax return accordingly. Such amendments could even be made during a tax audit to receive lighter fines. Taxpayers would be assigned one-stop contacts in the administration. Also in the drafting of tax legislation, stakeholders had been involved more strongly.

Another significant point was the improvement of the system of advance rulings to enhance legal certainty. Those rulings could be issued either as formal position on a piece of tax legislation or as assessment of a particular situation. Rulings that were considered relevant for a greater number of cases were published online. Rulings were free of charge, binding for the administration but had no retroactive effect. Most requests had to be answered within three months, the absence of an answer from the administration being considered an implicit approval. Finally, taxpayers could ask for a re-assessment where they do not agree with the ruling.

As proven by the number of 19,000 rulings in 2009 compared to very few just five years ago, these measures have been very well perceived amongst taxpayers and tax lawyers. These efforts were very demanding in terms of resources but Mr Lieb pointed out that they were an investment in so far as they reduced litigation.

Mr Lieb showed openness towards an even closer relationship with the taxpayer as practiced in other countries but stressed that any such model would have to take account of the country’s cultural environment, history and legislation. A system had to be built on existing practice, not on theory.

Karl-Heinz Haydl and Matthias Feldt, VAT experts from ThyssenKrupp and General Electric, strongly advocated in favour of a “tax partnership” between taxpayers and authorities, clarifying that mutual trust was vital and essential and did not mean blind trust. A starting point was the administration’s understanding of the enterprises’ business operations, internal processes and willingness to comply. At the same time also enterprises had to show willingness to understand the administration’s constraints – both sides need to closely and effectively cooperate and need to have internal risk management processes in place to successfully eliminate their common enemies – the fraudsters – from the VAT system.

Mr Haydl and Mr Feldt emphasised the importance that the right data be submitted and advocated a better use of technology for information exchange so that the administration could use their resources more efficiently to detect fraudsters. They stressed that technology was a key, but that there could be no “push the button” approach.

A step forward were single contact persons (“client relationship managers”) for businesses as they existed in the UK. That person would know the business, its processes and the people involved in and would regularly discuss tax-relevant developments with the company while they take place and not in the following year(s), which would reduce surprises and increase legal certainty for both sides.

For tax advisers, there were many ways to be included in a tax partnership process, e.g. by helping to develop internal risk management procedures.

Lastly, Mr Haydl and Mr Feldt appealed to countries that impose disproportionate fines for voluntary disclosure of genuine mistakes. With VAT being a transaction based tax and the high number of transactions both incoming and outgoing that flow through the business chain, genuine mistakes can happen. Legitimate busi-
Fiscal Committee

The Fiscal Committee met on 23 and 24 September 2010 in Prague.

Among the issues debated in Prague was the survey on the implementation of the OECD transfer pricing guidelines by the CFE member states started in 2009 by Committee members Stella Raventos and Piergiorgio Valente.

In June 2010, Fiscal Committee chairman Gottfried Schellmann presented his ideas on facilitating transfer pricing for SMEs at the European Commission’s Transfer Pricing Forum.

A working group of the Direct Tax Sub-Committee produced an opinion statement on double taxation sent to the European Commission in early July 2010. CFE also commented on the planned revision of the Interest & Royalties Directive in November 2010.

The Indirect Tax Sub-Committee significantly contributed to the work of the European Commission’s VAT Business Expert Group and participated in the meetings of that group in June and October 2010. Permanent representative of CFE in this group is Christian Amand.

ECJ Task Force

The European Court of Justice (ECJ) Task Force met on 14 June, 8 October and 9 December 2010 in Brussels. The discussions resulted in the adoption of an opinion statement on the X Holding case (C-337/08) in January 2011.

Professional Affairs Committee

The CFE PAC met on 23 September 2010 in Prague. Apart from the PAC Conference and the PAC Handbook, the Committee followed and discussed the ongoing evaluation of the Recognition of Professional Qualifications Directive (2005/36/EC). In this context, CFE attended two European Commission stakeholder meetings and had an appointment with the Commission. Regarding the Consumer Rights Directive proposal (COM(2008)614 final), a working group of the PAC prepared an opinion statement which was sent to select MEPs in October 2010.

Professional Affairs Handbook

On 1 December 2010, CFE released the first-ever European Handbook on professional affairs issues for tax advisers. The compendium deals with the situation in 19 European countries, covering a number of professional affairs issues like e.g. professional qualification and conduct as well as insurance, multidisciplinary cooperation, client confidentiality and cross-border activity. Tax professionals interested in practicing in another country find information about professional rules and contact details in 19 “Country Sheets”. An introductory part provides an overview across the participating countries, taking a comparative approach, and explains the EU law context.

Most of the information contained in the 217-page book has been collected from the members of the PAC and the CFE member organisations, the editing was done by Rudolf Reibel in the Brussels Office. IBFD had agreed to take over the layout and printing. This handbook can be ordered at a price of 25 € at the CFE Brussels office: brusselsoffice@cf-eutax.org

All Opinion statements of the Committees can be found on the CFE website.
CFE welcomes two new full members

The CFE General Assembly on 24 September 2010 in Prague has unanimously approved the applications of the French professional association "Avocats Conseils d'Entreprises" (ACE) and "Suomen Veroasiantuntijat" (Association of Finnish Tax Professionals) to join the CFE as full members. CFE now has 33 members from 24 countries of which three are observers.

General Assembly elects new CFE Board Members

Nora Schmidt-Kesseler elected Secretary General

Nora Schmidt-Kesseler is the CEO of the German Federal Chamber of Tax Advisers (Bundessteuerberaterkammer) in Berlin. She is also a member of the CFE Professional Affairs Committee. She succeeds Dr. Heinrich Weiler who had been Secretary General of CFE since 1994.

Henk Koller elected Vice President

Henk Koller is President of the Nederlandse Orde van Belangstingadviseurs and a tax partner at Deloitte in Amsterdam. As chairman of the CFE Professional Affairs Committee since 2007, Henk has already been part of the CFE Board.

Ian Hayes elected PAC Chairman

Professional Affairs and Fiscal Committee member Ian Hayes has been a Tax Practitioner for over 30 years. He is the owner of a tax firm and a company which develops software for EU wide VAT compliance. Furthermore, he is chairman of the Tax Faculty Technical Committee of the Institute of Chartered Accountants in England and Wales (ICAEW).

Stephen Coleclough and other Board members re-elected

Stephen Coleclough (Chartered Institute of Taxation, UK) was re-elected as CFE President and Dr. Herbert Becherer (German Federal Chamber of Tax Advisers) and Jiří Nekovář (Czech Republic) were confirmed as Vice Presidents. Gottfried Schellmann (Austria) will continue to be in charge of the CFE Fiscal Committee. Treasurer Dominique Gaveau (France) was also re-elected.

All abovementioned officers have been elected for a term of two years, starting on 1 January 2011.
CFE Events - pictures

CFE General Assembly in Prague on 23 - 24 September 2010

Professional Affairs Committee meeting

Fiscal Committee meeting

Gala Dinner at Prague Castle, the Spanish Hall

Welcome cocktail at the Senate of the Parliament of Czech Republic

General Assembly
The European Conference on Tax Advisers’ Professional Affairs
1 December 2010 in Düsseldorf

Heinrich Weiler (CFE General Secretary until 2010) and Alexander Wiedow (European Commission, DG TaxUD)

Participants to the CFE Professional Affairs Conference

Hans-Dieter Vietmeier (Vice-President of the StBK and StBV Düsseldorf)

Gottfried Schellmann (Chairman of the CFE Fiscal Committee), Matthias Feldt (ThyssenKrupp) and Karl-Heinz Haydl (General Electric)

Prof. Dr. Victor van Kommer (IBFD) and Netty Bussink (European Commission, DG TaxUD)

Andreas Schmitz von Hülst and Ulrich Müting (Fiscal Administration of Nordrhein-Westfalen) and Volker Humeny (StBK and StBV Düsseldorf)
Save the date:
CFE Forum on 7 April 2011 in Brussels

on Permanent Establishment

“Permanent Establishment” is a crucial term for both direct and indirect taxation. Nevertheless, both areas define it differently: For direct taxes, the OECD definition and deviations therefrom in different jurisdictions affect transfer pricing issues and the temporary and permanent transfer of assets. In indirect tax, apart from differences between EU member states, complexity is increased through entirely different concepts that exist in other countries such as an economic approach rather than a legal approach.

The goal of the CFE Forum is to deliver more than practical insight for both direct and indirect tax specialists and make them acquainted with new developments and deepen their existing knowledge.

More information will be available soon on the CFE website.
Member Organisations’ Page

New address of BStBK and CFE General Secretariat

The Bundessteuerberaterkammer, as well as the CFE General Secretariat, has a new address:

Behrenstrasse 42
10117 Berlin
Germany

E-mail: zentrale@bstbk.de
Web: www.bstbk.de

“Save the date”

BStBK is organising its yearly “German Congress of Tax Advisers” on 16 and 17 May in Munich.

More information will be available on BStBK website.

The 2nd joint International Indirect Tax Conference of the Institute of Indirect Taxation (IIT) & Chartered Institute of Taxation (CIOT) will take place on 16 February 2011 at The Royal Garden Hotel, Kensington, London.

For full details, speakers, presentation topics and to book a place please click on this link (reduced rate of £355 continues to apply even though the original date for this has now passed).

“Save the date”

The 2011 Indirect Taxes Conference will take place on 20 September 2011 at The Royal Garden Hotel, Kensington, London.

Further details will be available June/July 2011.

Report on the “International Tax Congress” of the CHAMBER OF TAX ADVISERS OF RUSSIA in Moscow from 15th – 16th December 2010

Report by Herbert Becherer

With its annual General Assembly the “Chamber of Tax Advisers of Russia” organised an International Tax Congress on 15th/16th December 2010 in Moscow. The Russian chamber succeeded to attract speakers from Russia from the Parliament, the Ministry of Finance and from abroad which allowed to discuss and look at the issues from multiple perspectives.

The event offered 3 international conferences which addressed the following issues:

• TAX POLICY OF RUSSIA – 2011 – AND NEW INTERNATIONAL REALITY
• TAX PLANNING – RUSSIAN AND INTERNATIONAL EXPERIENCE – ARBITRATION PRACTICE
• TAX CONSULTING AS BUSINESS IN RUSSIA AND ABROAD

As outlined by the chamber the main purpose of the event was to promote the dialogue between the legislation, the professionals, the tax administration and the taxpayer, to highlight the situation in Russia regarding tax and professional law policies in comparison to international situations and to encourage the exchange of view on an international level.

It was with pleasure that Jiří Nekovar, Herbert Becherer and Gottfried Schellmann followed the invitation of the Russian chamber to join the International Tax Congress. They also appreciated very much to act partly as speakers to the conferences. Jiří Nekovar contributed with a lecture to the issue “Tax policy of Russia – 2011 and new international reality”. Further, Herbert Becherer and Jiří Nekovar participated as speakers in the issue “Tax consulting as business in Russia and abroad” and reported to the attendees about the situation of the professionals in their respective countries. Both of them were invited to attend the General Assembly meeting of the Russian organisation, where Jiří Nekovar presented to the delegates the CFE, its importance and targets for the future and Herbert Becherer outlined the essentials of the tax adviser’s profession in Germany.

Finally, the delegates of the Russian Chamber of Tax Advisers, presently an observer of the CFE, decided to apply for full membership.
Impressum

Editor
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