International Lawyer

Volume 26 | Number 4 | Article 17

1992

United Kingdom

Recommended Citation

United Kingdom, 26 INT'L L. 1115 (1992)
https://scholar.smu.edu/til/vol26/iss4/17

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United Kingdom*

I. Movements of Capital Between Residents of EC Member States

On February 28, 1992, the Inland Revenue published a Statement of Practice (SP 2/92), which explains the views of the Treasury and the Inland Revenue on whether a particular transaction is of a type to which article 1 of EC Directive 88/361/EEC (the EC Capital Movements Directive) applies in circumstances where there might otherwise be doubt. This will assist U.K. resident companies to decide whether reporting the transaction to the Inland Revenue within six months will be sufficient.

II. Budget Statement

Detailed proposals for tax changes were announced in the Chancellor of the Exchequer's Budget Statement on March 10, 1992. In view of the General Election, however, very few of those proposals were incorporated in the Finance Bill, which received the Royal Assent on March 16, 1992. The main feature of the Finance Act 1992 is the introduction of a new lower rate of income tax for 1992-93 and subsequent years. The new rate applies to the first £2,000 of an individual's taxable income. For 1992-93, the new lower rate is 20 percent, but the basic (25 percent) and higher (40 percent) rates are unchanged.

Following the General Election, a second Finance Bill was introduced, the Finance (No. 2) Act 1992. The following are some of the more significant proposals announced in the Budget Statement and incorporated in the Finance (No. 2) Act 1992.

A. VAT

The turnover threshold for VAT registration was raised from £35,000 to £36,000 with effect from March 11, 1992, and the deregistration threshold from £33,600 to £35,100 with effect from May 1, 1992.

Large VAT payers must now make monthly payments on account. They are not required to make monthly returns and may continue to submit quarterly returns.

The chancellor proposes to legislate for the changes in VAT necessary for the introduction of the Single Market from January 1, 1993. The measures implement EC Directive 91/680/EEC, adding to and amending the EC Sixth VAT Directive 77/388/EEC. Import procedures will be abolished for intra-Community movements of goods from January 1, 1993. The concept of acquisition will replace these procedures. Supplies of goods between persons registered for VAT

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purposes in different Member States will continue to be zero-rated by the seller in the Member State of departure. However, under the new system the acquirer of goods will have to account for VAT in the Member States where the goods are transported. VAT control of intra-EC trade will be carried out using a system of administrative cooperation between the fiscal authorities of EC Member States. H. M. Customs & Excise has published draft clauses for the next Finance Bill as part of a consultation exercise with representatives of trade and industry and the legal and accountancy professions.

B. EC Direct Tax Measures

The chancellor proposed in his budget statement to introduce provisions to implement the three direct tax measures adopted by the EC Council of Ministers in July 1990. The measures concerned are: (i) the Mergers Directive, which defers certain tax charges that could otherwise arise on a cross-border reorganization; (ii) the Parents/Subsidiaries Directive, which eliminates the double taxation of dividends and abolishes withholding taxes on them when they are paid to a parent company in another Member State; and (iii) the Arbitration Convention, which sets up a mechanism for resolving transfer pricing disputes within the Community. The relevant provisions will be based on the draft clauses contained in the Inland Revenue consultative document published on December 17, 1991, and follow full consultation with interested parties.

III. The Lugano Convention

Jurisdictional questions and the recognition and enforcement of judgments, as between the EC Member States are generally determined in accordance with the 1968 Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.[1] This Convention is often referred to as the Brussels Convention or the European Judgments Convention. More recently, a very similar convention, the Lugano Convention, between the EC and the European Free Trade Association (EFTA) states, has come into force.[2]

EFTA is comprised of Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, and Switzerland.[3] Sometime ago, EFTA entered into negotiations with the EC with a view to joining the Brussels Convention regime. This was seen as a way to strengthen economic cooperation between the two blocs. However, as EFTA states are not subject to the jurisdiction of the European Court of Justice

1. *Done at* Brussels, Sept. 27, 1968, Common Mkt. Rep. (CCH) No. 96 (Nov. 19, 1968), *reprinted in* 8 I.L.M. 229 (1969).

2. Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, *done at* Lugano, Sept. 16, 1988, 88/592/EEC, 1988 O.J. (L 319) 9, *reprinted in* 28 I.L.M. 620 (1989).

3. However, at the time the Lugano Convention was negotiated Liechtenstein was not a member of EFTA and is not at present a party to the Lugano Convention. References to EFTA exclude Liechtenstein for the purposes of this report.

(ECJ), nor members of the EC, it was not practicable for them to accede to the Brussels Convention itself. The solution to this problem was to draft a "Parallel Convention."

As the Lugano Convention is parallel to the Brussels Convention, its scope is identical. The conventions apply to "civil and commercial matters whatever the nature of the court or tribunal."[4] Criminal matters are excluded, along with revenue, customs, and administrative matters. Other important exceptions include insolvency and bankruptcy arbitration, the status or legal capacity of natural persons, rights in property arising out of matrimonial relationships, wills and succession, and Social Security. Furthermore, the conventions do not affect any other conventions that govern jurisdiction or the recognition and enforcement of judgments in relation to particular matters, such as the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929.

The Lugano Convention rules for determining which contracting state's courts have jurisdiction to hear a case are nearly identical to those in the Brussels Convention. Similarly, rules governing the recognition and enforcement of judgments are like those of the Brussels Convention. This similarity means that a virtually identical code will be applicable throughout the EC and EFTA nations.

The basic rule concerning jurisdiction in both conventions is that a person must ordinarily be sued in the courts of the state in which he is domiciled. (The conventions apply to both natural and legal persons.) This general rule is then subject to a number of exceptions, depending on whether the action falls within one of the following categories:

(i) special jurisdiction—the defendant may also be sued in another contracting state, for instance, in matters relating to contract, tort, the operations of a branch or agency, or where there is more than one defendant or third-party proceedings;

(ii) insurance or consumer contracts—there are particular rules governing jurisdiction over such matters;

(iii) exclusive jurisdiction—action must be taken in the forum specified, regardless of the domicile of the parties, for example, in many actions relating to land—in the courts of the state where the land is situated;

(iv) jurisdiction agreements—the conventions recognize parties' choice of forum provided certain formal requirements are met (the choice of jurisdiction cannot override exclusive jurisdiction);

(v) submission to the jurisdiction—a defendant may submit to the jurisdiction in which an action has been commenced (this does not apply in a case of exclusive jurisdiction).

The convention also lays down rules to resolve situations where proceedings involving the same cause of action between the same parties or related actions are commenced in the courts of two contracting states.

4. Lugano Convention, *supra* note 2, art. 1.

The conventions provide for the recognition and enforcement of judgments between the contracting states. Such recognition and enforcement may be refused only under very limited grounds. These include, for instance, where recognition is contrary to public policy or where judgment was given in default of appearance and service was not effected in good time.

Even though the Brussels and Lugano Conventions are parallel conventions, there are some important differences in their structure and operation. Since the EFTA states are not subject to the jurisdiction of the ECJ, there is no supreme court to interpret the Lugano Convention whose decisions will be binding on the national courts of all contracting states. Thus, the introduction of a mechanism was necessary to ensure uniform interpretation of the provisions of the Lugano Convention. Therefore, Protocol No. 2 to the Lugano Convention states that the courts of contracting states are to "pay due account" to relevant decisions made by the courts of other contracting states. Furthermore, a system of exchange of information is instituted, concerning judgments delivered pursuant to the Lugano Convention, as well as relevant judgments made under the Brussels Convention. This system is to be coordinated by the Registrar of the ECJ. A Standing Committee composed of representatives from the signatory states is also to be set up to review the operation of the Lugano Convention.

To further ensure that corresponding provisions of the Brussels and Lugano Conventions are interpreted uniformly, the signatory states made declarations saying that the ECJ should pay due account to rulings under the Lugano Convention, and that courts of the EFTA states should pay due account to the rulings of the ECJ, and of courts in the EC states, concerning the Brussels Convention.

The Lugano Convention should be applied:

(a) in matters of jurisdiction, where the defendant is domiciled in an EFTA state, or where an EFTA state has exclusive jurisdiction, or has jurisdiction pursuant to the parties' agreement;

(b) where the same cause of action between the same parties or related actions are commenced in two different contracting states, one of which is an EFTA state;

(c) in matters of recognition and enforcement, where either the original or enforcing state is an EFTA state.[5]

The Lugano Convention also states when it should be applied instead of the Brussels Convention. Obviously, the question of choice will only arise for the courts of EC Member States since EFTA countries are not parties to the Brussels Convention.

In both the Brussels and the Lugano Conventions, there is special provision concerning suits against persons domiciled in Luxembourg. Such persons may refuse to appear before a court where an action has been instituted on the basis

5. *Id.* art. 54B.

of the place of performance of a contractual obligation (special jurisdiction). Switzerland has also made an important reservation regarding this ground of jurisdiction in the Lugano Convention. Judgments given in other contracting states, where jurisdiction was based solely on the place of performance of the contractual obligation in question, against defendants domiciled in Switzerland at the time proceedings were commenced, may not be enforceable in Switzerland.[6]

The Lugano Convention operates as between those countries that have brought it into force. It entered into force on January 1, 1992, as between France, The Netherlands, and Switzerland. On February 1, 1992, the convention came into force with respect to Luxembourg and on May 1, 1992, it came into force for the United Kingdom. The Civil Jurisdiction and Judgments Act 1991 states that the Lugano Convention is to have the force of law in the United Kingdom.

The combined effect of the Brussels Convention and the Lugano Convention extends a unified and certain regime for bringing actions and enforcing judgments throughout most of western Europe.

6. *Id.* Protocol No. 1, art. 1a.