

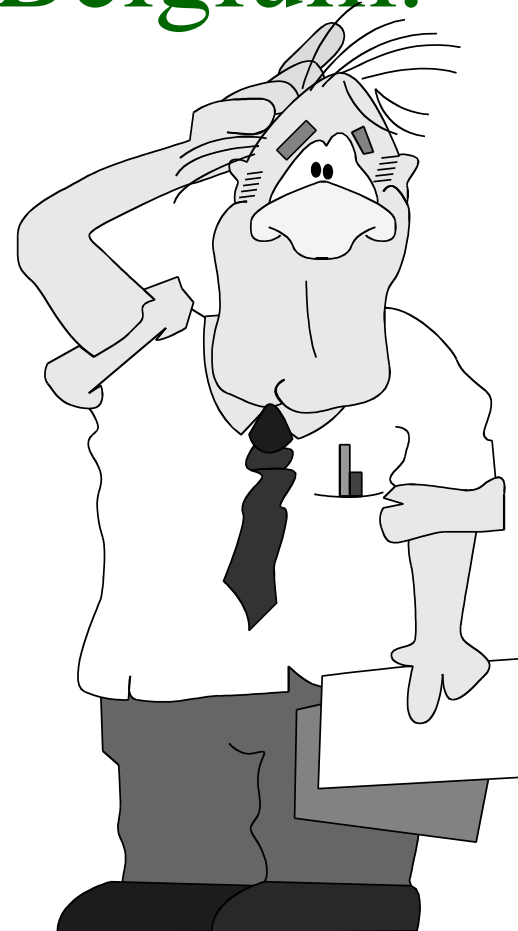
# Enforcement of EU Tax Law and Legal Remedies, Country Report for Belgium.



**Prof. Patrick Wille**

President VAT Forum

Chief VAT Officer Avalara





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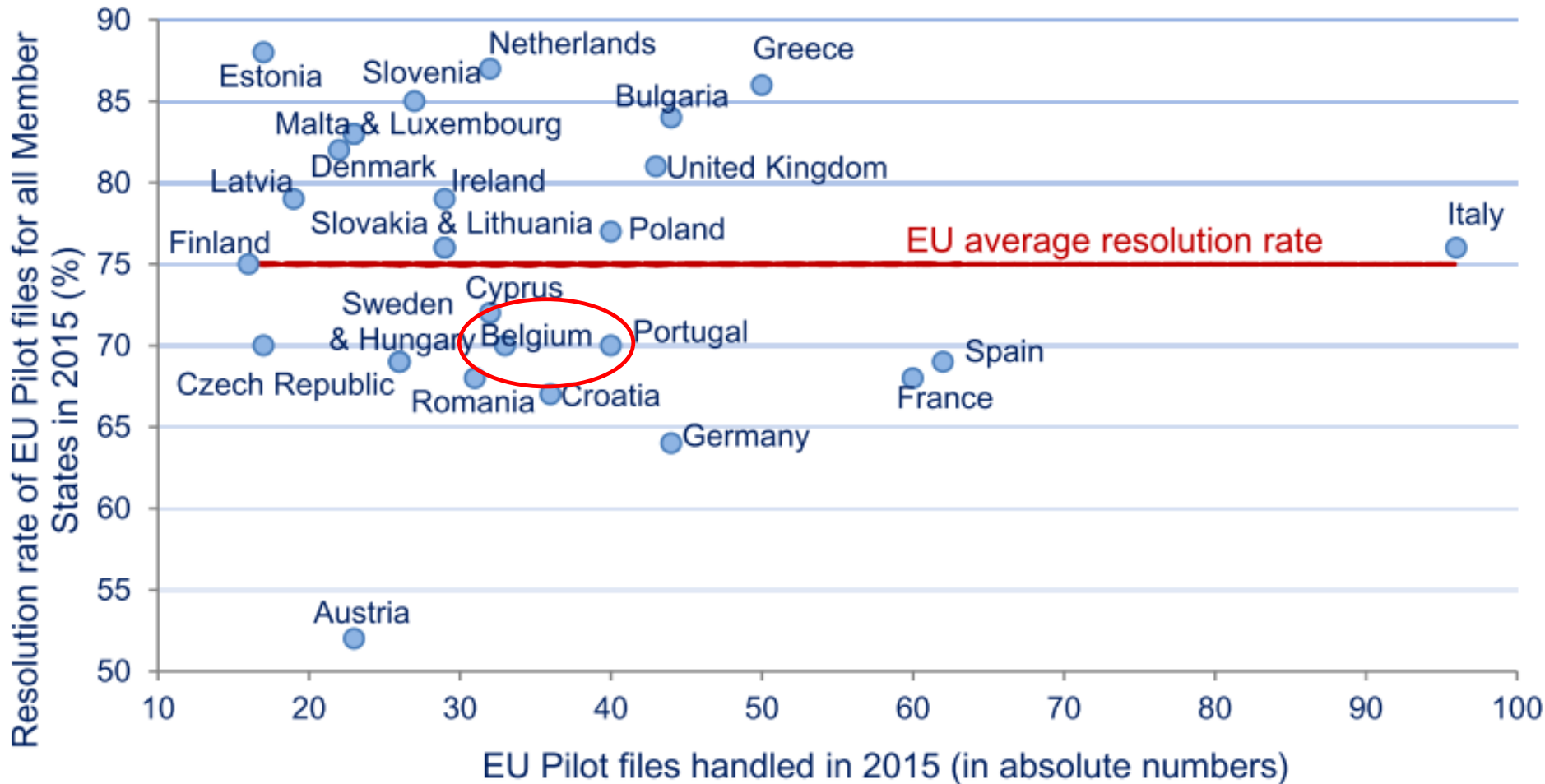
## **REPORT FROM THE COMMISSION**

### **Monitoring the application of European Union law 2015 Annual Report**

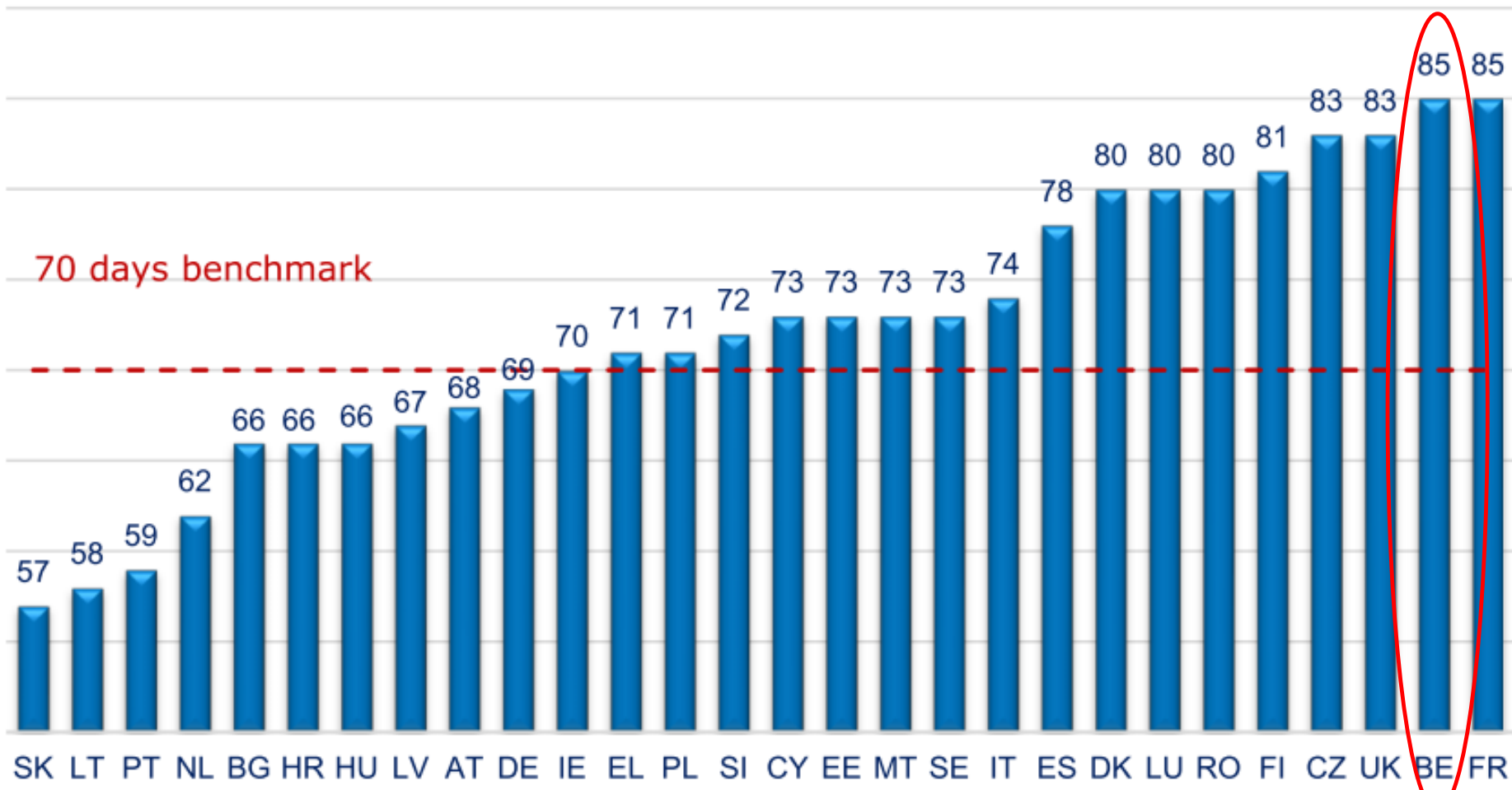
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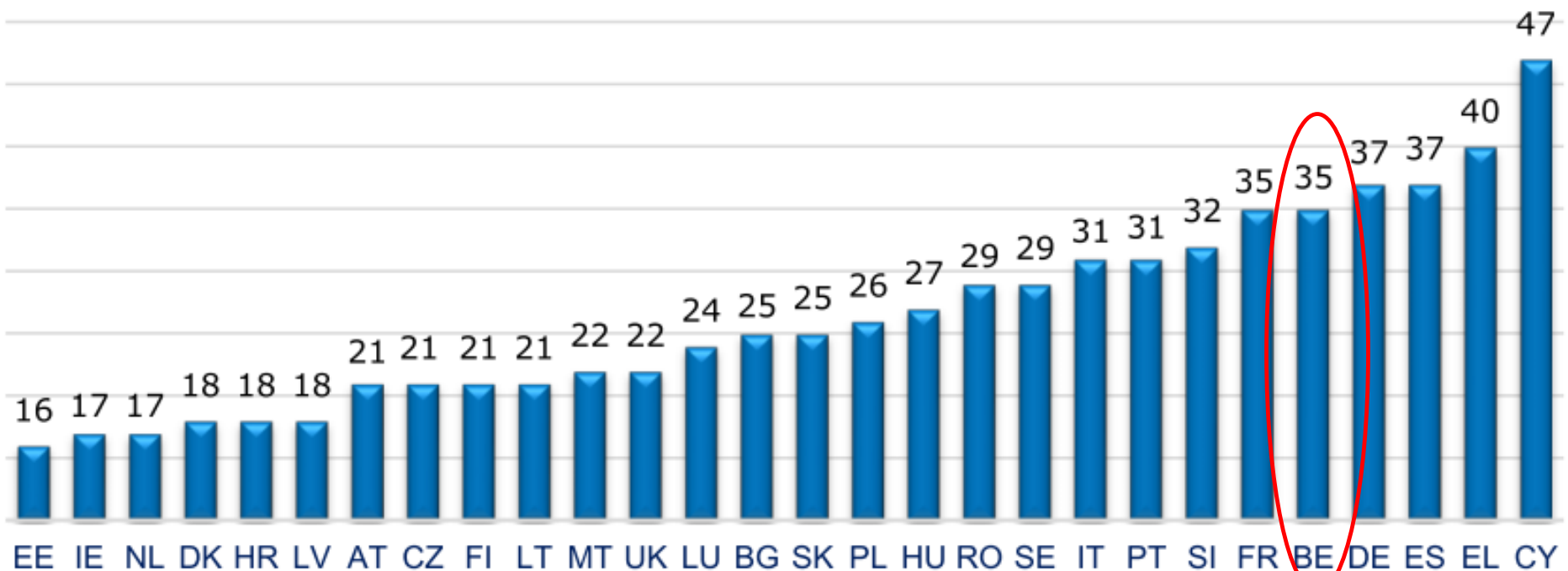
### EU Pilot files: Resolution rate versus number of files handled in 2015



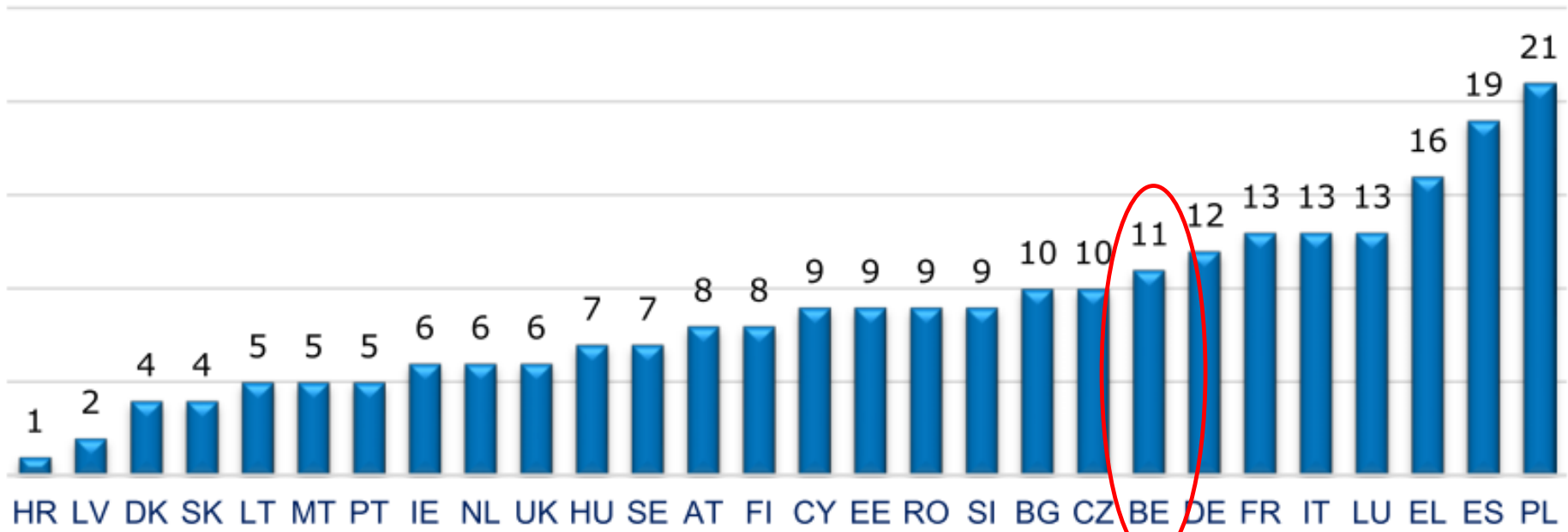
## EU Pilot files: Member States' response times in 2015 (in days)



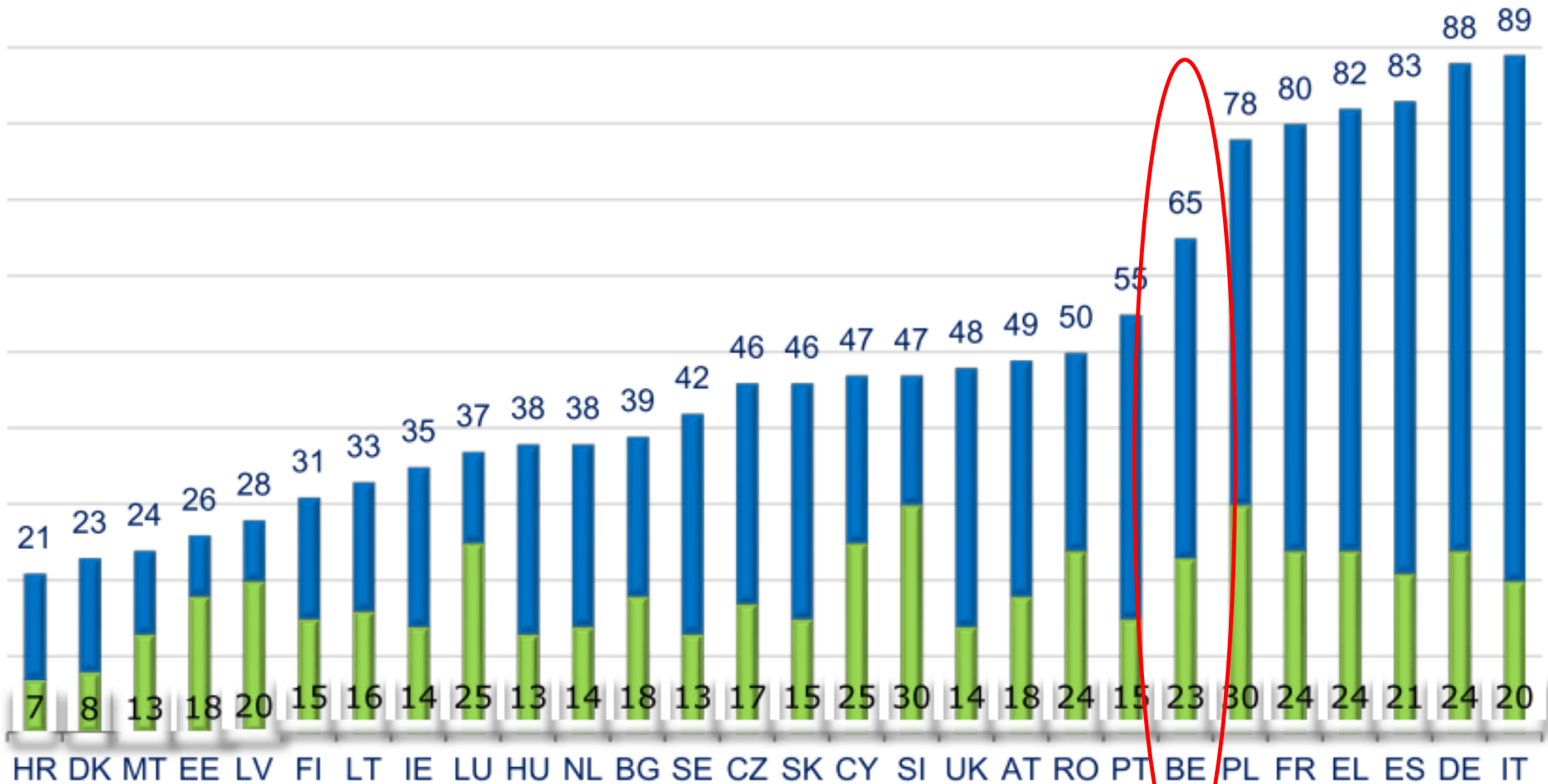
### New infringement cases at 31 December 2015



### Reasoned opinions sent to Member States in 2015



## Infringement cases open on 31 December 2015

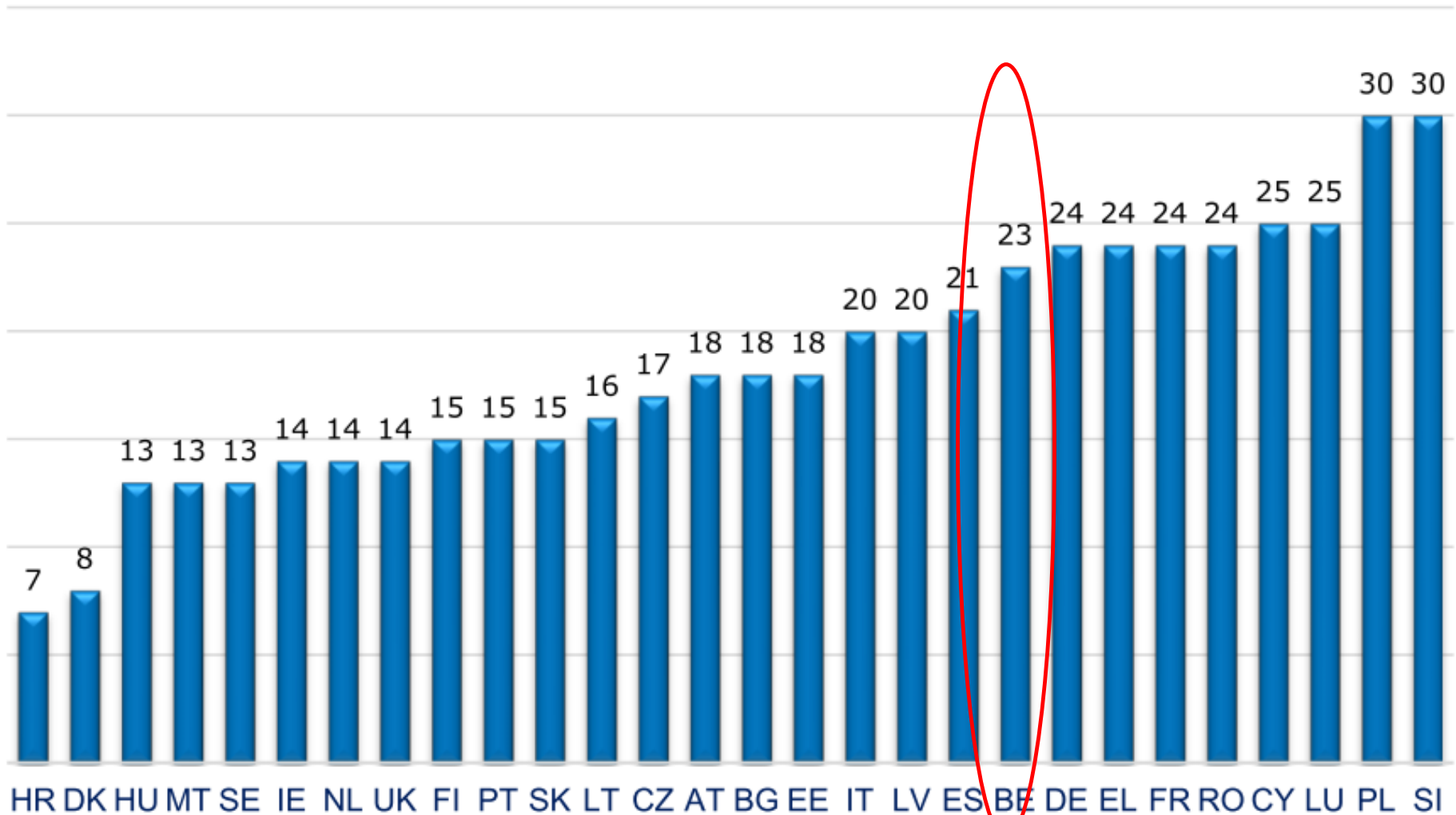


Top figures: Total number of infringements

■ Infringements for incorrect transposition and/or bad application of EU laws

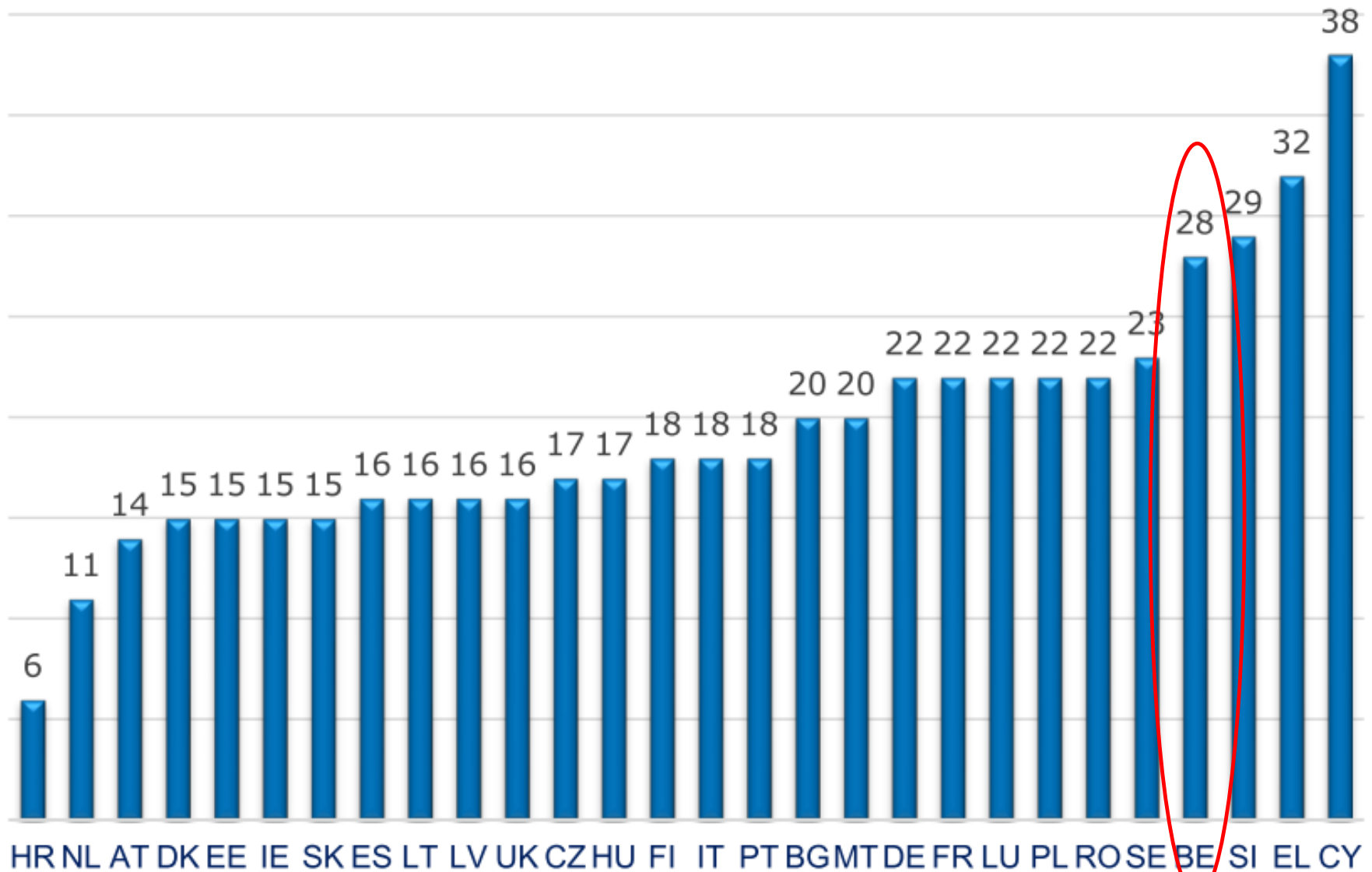
■ Late transposition infringements

Late transposition infringement cases open on 31 December 2015





### New late transposition infringement cases



# Minimum price for new cars

## □ Royal decree N° 17, Article 2:

- (1) VAT shall be charged, in the case of new cars, on an amount which is not less than the catalogue price in force at the time when the VAT is payable.
- (2) The catalogue price is the price fixed by the manufacturer for the sale to the user of new motor cars of the same type along with their equipment and accessories.

# Minimum price for new cars

## □ Article 11, A. 1. (a) Sixth Directive

### □ The taxable amount shall be:

- (a) In respect of the supply of goods and services, other than as referred to in (b), (c) and (d) below, everything which constitutes the consideration which has been or is to be obtained by the supplier, from purchaser, the customer or a third party for such supplies including subsidies directly linked to the price of such supplies.

# Minimum price for new cars

- ❑ In a letter dated 21/11/1979, the Commission informed the Belgian Government that, in its opinion, the provisions of Belgian law were not compatible with those of the Sixth Directive
- ❑ The Belgian Government replied in a letter dated 10/6/1980
- ❑ In a letter dated 20/3/1981, the Commission commenced the infringement procedure provided for by Article 169 of the EEC Treaty.

# Minimum price for new cars

- ❑ The Belgian Permanent Representation replied on 10/6/1981
- ❑ The Commission sent Belgium a reasoned opinion dated 15/4/1982
- ❑ The Commission lodged a application which was received at the Court Registry on 20/12/1982

# Minimum price for new cars

- ❑ Case 324/82 - Judgment of the Court of 10 April 1984. - Commission of the European Communities v Kingdom of Belgium.
  - ❑ Failure of a Member State to fulfil its obligations
  - ❑ Sixth Directive on turnover taxes
    - ❑ Taxable amount

# Minimum price for new cars

## □ Case 324/82 - Summary

- The special measures which Member States may retain, by virtue of article 27 ( 1 ) and ( 5 ) of the Sixth Council Directive, in order to prevent certain types of tax evasion or avoidance may not in principle derogate from the basis for charging value added tax laid down in article 11, except within the limits strictly necessary for achieving that aim.

# Minimum price for new cars

## □ Case 324/82 - Summary

- National legislation which provides that the minimum basis of assessment for the sale of new cars is not to be lower than the catalogue price in force at the time when the tax becomes due and which therefore excludes from consideration any form of price discount or rebate that entails such a complete and general amendment of the basis of assessment that it is impossible to accept that it contains only the derogations needed to avoid the risk of tax evasion or avoidance.



# Minimum price for new cars

## ❑ Case 324/82 - Operative part

❑ On those grounds, the Court hereby:

❑ declares that , by retaining the catalogue price as the basis for charging VAT on cars, as a special measure derogating from article 11 of the Sixth Directive, when the requirements laid down in article 27 (5) of the directive are not fulfilled, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty ;

❑ dismisses the remainder of the application ;

❑ orders the Kingdom of Belgium to pay the costs.

# Minimum price for new cars

- ❑ Case 391/85 - Judgment of the court of 4 February 1988. - Commission of the European Communities v Kingdom of Belgium.
  - ❑ failure of a state to fulfil its obligations
  - ❑ failure to comply with a judgment of the court
  - ❑ Sixth VAT Directive - taxable amount.

# Minimum price for new cars

## □ Case 391/85 - Summary

- a Member State has not taken the necessary measures to comply with a judgment of the court finding it to be in breach of its obligations for having laid down, in breach of a Community Directive, a minimum taxable amount equal to the list price for the purposes of VAT on sales of new cars if, whilst abolishing the said minimum taxable amount, it adjusts an existing registration tax in such a way that by the combined effect of VAT and that tax, which only appears to be a separate tax, the total amount of tax levied remains the same .

# Minimum price for new cars

## ❑ Case 391/85 - Operative part

❑ On those grounds, The Court hereby :

❑ declares that by retaining in practice, under its law of 31 July 1984, the list price as the basis for the taxation of new saloon cars and estate cars, the Kingdom of Belgium has failed to take the measures necessary to comply with the judgment of the court of 10 April 1984 and has failed to fulfil its obligations under the treaty;

❑ orders the Kingdom of Belgium to pay the costs.

# Lawyers

- ❑ Exemption for lawyers (article 44, § 1, 1<sup>o</sup>, of the VAT Law)
  - ❑ According to the tax authority's interpretation, the VAT exemption for services provided by lawyers was limited to the lawyers registered at a Belgian bar.
- ❑ The Commission informed Belgium on 22 October 1999 of its opinion that this limitation was discriminatory and infringed up on the free movement of services as described in article 49 of the Treaty establishing the European Community

# Lawyers

- ❑ Exemption for lawyers (article 44, § 1, 1°, of the VAT Law)
  - ❑ After investigation, it was decided to comply with that advice and extend the scope of the exemption to lawyers registered at a bar in one of the Member States.

# Companies acting as directors

- ❑ The directors, managing directors and liquidators had the option of whether or not to register for VAT and thus whether or not to subject their activities in this context to VAT (Decision no. E.T.79.581 of 27.01.1994).
- ❑ The choice made was theoretically irrevocable and had to be applied at the same time to all mandates exercised by legal persons acting as directors. (Decision no. E.T.118.288 of 27.04.2010).

# Companies acting as directors

- ❑ In its decision no. E.T. 125.180 of 20.11.2014, the tax authority decided that this optional system, which was formally criticised by the European Commission, would be revoked.
- ❑ When this decision was applied, the legal persons acting as directors were defined as taxable persons for VAT purposes and were subjected to VAT for the activities they engage in as such.
- ❑ The date on which the decision would be revoked was postponed until 01.06.2016.



# Exempt educational services

## □ Art. 44, § 2, 4° Belgian VAT Law

□ The new article 44, § 2, 4° of the VAT Law, providing an exemption for the provision of education, came into effect on 1 January 2014.

□ The new article 44, § 2, 4°, of the VAT Law is aimed at responding to the comments in the European Commission's reasoned opinion dated 17 February 1993.

# Exempt educational services

- Art. 44, § 2, 4° Belgian VAT Law
  - The Belgian State was considered to have failed to fulfil its obligations because any institution that provided education was considered to be an institution exempt from VAT without requiring any particular permit in advance from or on behalf of the Minister of Finance.

# Exempt educational services

- Art. 44, § 2, 4° Belgian VAT Law
  - The European Commission asked Belgium to apply the exemption within the limitations of the aforementioned Directive 2006/112/EU (previously the Sixth Directive).

# Exempt educational services

□ Case C-319/12 Judgment of the Court  
28 November 2013, Minister  
Finansów v MDDP sp. z o.o.  
Akademia Biznesu, sp. komandytowa

□ Point (i) of Article 132(1)(i), points (a) to (d) of 133(1) and Article 134 of Council Directive 2006/112/EC of 28 November 2006 must be interpreted as meaning that they do not preclude educational services provided for commercial purposes by bodies not governed by public law from being exempt from value added tax.

# Exempt educational services

- ❑ However, point (i) of Article 132(1) of that directive precludes a general exemption of all supplies of educational services, without consideration of the objects pursued by non-public organisations providing those services.

# Exempt educational services

- ❑ A taxable person may not claim, in accordance with Article 168 of Directive 2006/112 or the national provision transposing it, a right to deduct input value added tax where, as a result of an exemption provided for by national law in infringement of point (i) of Article 132(1) of that directive, its output supplies of educational services are not subject to value added tax.

# Exempt educational services

- That taxable person may, however, rely on the incompatibility of that exemption with point (i) of Article 132(1) of Directive 2006/112 so that that exemption is not applied to it where, even taking account of the discretion granted to Member States, that taxable person could not objectively be regarded as an organisation having objects similar to those of an educational body governed by public law, within the meaning of that provision, which is to be determined by the national court.

# Exempt educational services

- ❑ In the latter case, the educational services supplied by that taxable person will be subject to value added tax and that person could then benefit from the right to deduct input value added tax.



# Building and the land on which the building stands

## □ Art. 12 Directive 2006/112/EU

□ 1. Member States may regard as a taxable person anyone who carries out, on an occasional basis, a transaction relating to the activities referred to the second subparagraph of Article 9(1) and in particular one of the following transactions:

□ (a) the supply, before first occupation, of a building or parts of a building and of the land on which the building stands;

□ (b) the supply of building land

# Building and the land on which the building stands

- ❑ Case C-400/98, Brigitte Breitsohl, 8 June 2000
  - ❑ Article 4(3)(a) of the Sixth Directive 77/388 is to be interpreted as meaning that the option for taxation exercised at the time of the supply of buildings or parts of buildings and the land on which they stand must relate inseparably to the buildings or parts of buildings and the land on which they stand.

# Building and the land on which the building stands

- ❑ On 31 March 2009, the European Commission asked the federal government to convert the judgment into Belgium law.
- ❑ On 25 September 2009, the European Commission repeated this request and asked for a timetable to be presented.
- ❑ At the Consultation Committee meeting on 14 October 2009, it was decided that the government would introduce the new arrangement from January 2011 onwards.

# ECJ Cases - Belgium

## □ Case C-131/91

□ Judgment of the Court of 9 July 1992.

□ "K" Line Air Service Europe BV v  
Eulaerts NV and Belgian State.

□ VAT - Minimum base of assessment for  
second-hand cars.

# ECJ Cases - Belgium

- The Sixth Council Directive of 17 May 1977 is to be interpreted as precluding national legislation laying down, in respect of the sale of second-hand cars between taxable persons, a minimum basis of assessment for VAT which is different from that provided for by Article 11 of the directive.

# ECJ Cases - Belgium

## □ Case C-110/94

- Judgment of the Court of 29 February 1996.
- Intercommunale voor zeewaterontziltting (INZO) v Belgian State.
- VAT - Concept of economic activity - Status of taxable person - Activity confined to a profitability study for a project, followed by the abandonment of the project.

# ECJ Cases - Belgium

**Article 4 of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as meaning that:**

- **where the tax authority has accepted that a company which has declared an intention to commence an economic activity giving rise to taxable transactions has the status of a taxable person for the purposes of VAT, the commissioning of a profitability study in respect of the envisaged activity may be regarded as an economic activity within the meaning of that article, even if the purpose of that study is to investigate to what degree the activity envisaged is profitable, and that**
- **except in cases of fraud or abuse, the status of taxable person for the purpose of VAT may not be withdrawn from that company retroactively where, in view of the results of that study, it has been decided not to move to the operational phase, but to put the company into liquidation with the result that the economic activity envisaged has not given rise to taxable transactions.**

# ECJ Cases - Belgium

## □ Case C-37/95

□ Judgment of the Court of 15 January 1998.

□ Belgische Staat v Ghent Coal Terminal NV.

□ Value added tax - Sixth VAT Directive - Article 17 - Right to deduct - Adjustment of deductions..



# ECJ Cases - Belgium

- ❑ Article 17 of the Sixth Council Directive 77/388/EEC must be construed as allowing a taxable person acting as such to deduct the VAT payable by him on goods or services supplied to him for the purpose of investment work intended to be used in connection with taxable transactions.
- ❑ The right to deduct remains acquired where, by reason of circumstances beyond his control, the taxable person has never made use of those goods or services for the purpose of carrying out taxable transactions.

# ECJ Cases - Belgium

- ❑ A supply of investment goods during the adjustment period, where such occurs, may give rise to an adjustment of the deduction under the conditions set out in Article 20(3) of Directive 77/388.

# ECJ Cases - Belgium

- ❑ Case C-390/96
  - ❑ Judgment of the Court (Fifth Chamber) of 7 May 1998.
  - ❑ Lease Plan Luxembourg SA v Belgian State.
  - ❑ Sixth VAT Directive - Car-leasing services - Fixed establishment - Rules governing reimbursement of VAT to taxable persons not established in the territory of the State - Principle of non-discrimination.

# ECJ Cases - Belgium

- ❑ 1. The term 'fixed establishment' in Article 9(1) of the Sixth Council Directive 77/388/EEC must be interpreted in such a way that an undertaking established in one Member State which hires out or leases a number of vehicles to clients established in another Member State does not possess a fixed establishment in that other State merely by engaging in that hiring out or leasing.

# ECJ Cases - Belgium

- ❑ 2. It is contrary to Article 59 of the EC Treaty for national rules to provide that taxable persons not established in a Member State, who apply for a refund of VAT in accordance with the Eighth Council Directive 79/1072/EEC Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, are entitled to interest only from such time as notice to pay was served on that Member State and at a lower rate than that applied to the interest paid to taxable persons established in the territory of that State automatically on the expiry of the statutory time-limit for reimbursement.

# ECJ Cases - Belgium

- ❑ Case C-142/99
  - ❑ Judgment of the Court of 14 November 2000.
  - ❑ Floridienne SA and Berginvest SA v Belgian State.
  - ❑ Sixth VAT Directive - Deduction of input tax - Undertaking subject to tax on only one part of its operations - Deductible proportion - Calculation - Holding company collecting share dividends and loan interest from its subsidiaries - Involvement in management of subsidiaries.

# ECJ Cases - Belgium

- ❑ Article 19 of the Sixth Council Directive 77/388/EEC is to be interpreted as meaning that the following must be excluded from the denominator of the fraction used to calculate the deductible proportions:
  - ❑ share dividends paid by its subsidiaries to a holding company which is a taxable person in respect of other activities and which supplies management services to those subsidiaries, and
  - ❑ interest paid by the subsidiaries to the holding company on loans it has made to them, where the loan transactions do not constitute, for the purposes of Article 4(2) of the Sixth Directive, an economic activity of the holding company.

# ECJ Cases - Belgium

- ❑ Case C-284/03
  - ❑ Judgment of the Court of 18 November 2004.
  - ❑ Belgian State v Temco Europe SA.
  - ❑ Sixth VAT Directive - Article 13B(b) - Exempt transactions - Letting of immovable property - Licence to occupy.



# ECJ Cases - Belgium

- Article 13B(b) of Sixth Council Directive 77/388/EEC must be interpreted as meaning that transactions by which one company, through a number of contracts, simultaneously grants associated companies a licence to occupy a single property in return for a payment set essentially on the basis of the area occupied and by which the contracts, as performed, have as their essential object the making available, in a passive manner, of premises or parts of buildings in return for a payment linked to the passage of time, are transactions comprising the ‘letting of immovable property’ within the meaning of that provision and not the provision of a service capable of being categorised in a different way.

# ECJ Cases - Belgium

## □ Case C-436/10

□ Judgment of the Court (Fifth Chamber) of 29 March 2012.

□ Belgian State v BLM SA.

□ Sixth VAT Directive - Article 6(2), first paragraph, point (a), and Article 13(B)(b) - Right of deduction - Business assets which belong to a taxable person which is a legal person and which are placed at the disposal of its staff for their private use.

# ECJ Cases - Belgium

- ❑ 1. Point (a) of the first paragraph of Articles 6(2) and Article 13(B)(b) of the Sixth Council Directive 77/388/EEC must be interpreted as precluding national legislation which — despite the fact that the characteristics of the leasing or the letting of immovable property for the purposes of Article 13(B)(b) are not present — treats as a supply of services exempt from VAT under that provision the private use, by the staff of a taxable person which is a legal person, of part of a building constructed or owned by virtue of a right in rem in immovable property, held by that taxable person, where the input tax on that business asset is deductible;

# ECJ Cases - Belgium

- ❑ 2. It is for the referring court to determine whether, in a situation such as that at issue in the case before it, a finding can be made that there is a letting of immovable property for the purposes of Article 13(B)(b) of the Sixth Directive.

# ECJ Cases - Belgium

- ❑ Joined Cases C-210/11 and C-211/11
  - ❑ Judgment of the Court (Sixth Chamber),  
18 July 2013
  - ❑ *État belge v Medicom SPRL (C-210/11) and  
Maison Patrice Alard SPRL (C-211/11)*
  - ❑ Sixth VAT Directive — Article 6(2), first  
paragraph, point (a) and Article 13(B)(b) —  
Right to deduction — Capital goods belonging  
to legal persons made partly available to their  
managers for private use — No rent payable in  
money, but taking into account of a benefit in  
kind for income tax purposes

# ECJ Cases - Belgium

- 1. Point (a) of the first paragraph of Article 6(2) and Article 13(B)(b) of Sixth Council Directive 77/388/EEC, must be interpreted as precluding the making available of part of immovable property belonging to a legal person to its manager for his private use, without there being provision for the beneficiaries of that arrangement to pay a rent in money by way of consideration for the use of that property, from constituting an exempted letting of immovable property within the meaning of that directive; the fact that the making available of that property is deemed, under the relevant national income tax legislation, to be a benefit in kind stemming from the beneficiaries' performance of their corporate duties or under their contract of employment is of no import in that regard.

# ECJ Cases - Belgium

- ❑ 2. Point (a) of the first paragraph of Article 6(2) and Article 13(B)(b) of the Sixth Directive 77/388, must be interpreted as meaning that, in situations such as those at issue in the main proceedings, the issue whether or not the making available of all or part of the property in its entirety forming part of the assets of the business to managers, administrators or members of that business is directly linked to the operation of the business is of no relevance for the determination of whether that making available comes within the exemption provided for in the latter provision.

# ECJ Cases - Belgium

## □ Case C-55/14

- Judgment of the Court (Ninth Chamber) of 22 January 2015
- Régie communale autonome du stade Luc Varenne v État belge
- Directive 77/388/EEC — VAT — Exemptions — Article 13B(b) — Concept of ‘exempted letting of immovable property’ — Provision, for consideration, of a football stadium — Contract for provision reserving certain rights and prerogatives to the owner — Supply, by the owner, of various services representing 80% of the charge specified in the contract



# ECJ Cases - Belgium

- Article 13B(b) the Sixth Council Directive 77/388/EEC, must be interpreted as meaning that the act of making available, for consideration, a football stadium under a contract reserving certain rights and prerogatives to the stadium owner and providing for the supply, by the owner, of various services, including services of maintenance, cleaning, repair and upgrading, representing 80% of the charge which is agreed in the contract to be payable, does not constitute, as a general rule, a ‘letting of immovable property’ within the meaning of that provision. The finding of the facts is for the referring court.

# ECJ Cases - Belgium

## ❑ Case C-599/12

❑ Judgment of the Court (Eighth Chamber) of 13 March 2014.

❑ Jetair NV and BTW-*eenheid* BTWE  
Travel4you v FOD Financiën.

❑ VAT - Special scheme for travel agents - Transactions carried out outside the European Union - Sixth Council Directive 77/388/EEC - Article 28(3) - Directive 2006/112/EC - Article 370 - ‘Standstill’ clauses - Amendment of national legislation during the transposition period.

# ECJ Cases - Belgium

- 1. Article 28(3) of Sixth Council Directive 77/388/EEC and Article 370 of Council Directive 2006/112/EC do not preclude the introduction by a Member State before 1 January 1978, during the transposition period of Sixth Directive 77/388, of a provision that amends its existing legislation by imposing VAT on the transactions of travel agents relating to journeys outside the European Union.

# ECJ Cases - Belgium

- 2. A Member State is not in breach of Article 309 of Directive 2006/112 by not treating the services of travel agents as exempt intermediary activities where those services relate to journeys made outside of the European Union and by imposing VAT on those services, if it imposed VAT on those services on 1 January 1978.
- 3. Article 370 of Directive 2006/112, read in conjunction with point 4 of Part A of Annex X to that directive, does not infringe European Union law by granting Member States the option to continue to tax the supply of the services of travel agents in relation to journeys outside the European Union.

# ECJ Cases - Belgium

- ❑ 4. A Member State does not infringe European Union law, in particular the principles of equality, proportionality and fiscal neutrality, by treating travel agents, within the meaning of Article 26(1) of Sixth Directive 77/388 and Article 306 of Directive 2006/112, differently from intermediaries and by laying down a rule, such as the Royal Decree of 28 November 1999, under which only the services of travel agents, but not those of intermediaries, are taxable with regard to journeys outside the European Union.

Questions?

