COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.11.1998
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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

FIRST ANNUAL REPORT ON THE IMPLEMENTATION OF THE CODE OF CONDUCT FOR BUSINESS TAXATION AND FISCAL STATE AID

PROGRESS REPORT ON THE WORK CONCERNING THE TAXATION OF INCOME FROM SAVINGS AND A COMMON SYSTEM OF TAXATION FOR INTEREST AND ROYALTY PAYMENTS BETWEEN ASSOCIATED COMPANIES

1998

1. INTRODUCTION

1. A new global approach to taxation issues was first presented by the Commission in April 1996 at the informal ECOFIN Council in Verona. The objective was to place taxation issues in the broader context of Community policies and, in particular, to propose consideration of the economic and social disadvantages arising from the absence of tax co-ordination in the Union.

2. Discussions took place in this new global framework in 1996 and 1997 in a high level Taxation Policy Group consisting of personal representatives of Finance Ministers of Member States. The Commission Communication "A package to tackle harmful tax competition in the European Union" drew on those discussions, and, on the basis of that Communication, the Council, on 1 December 1997, adopted conclusions concerning tax policy, and in particular concerning a package of three tax measures[1].

3. The tax package aims at achieving the objectives of reducing the continuing distortions in the Single Market, preventing excessive losses of tax revenue and encouraging tax structures to develop in a more employment friendly way. In reaching these conclusions, the Council emphasised the respective spheres of competence of the Member States and the Community resulting from the Treaty. In addition, it acknowledged the positive effects of fair competition and the need to consolidate the competitiveness of the European Union and the Member States at an international level, whilst noting that tax competition may also lead to tax measures with harmful effects.

[1] Conclusions of the ECOFIN council meeting on 1 December 1997 concerning taxation policy (98/C 2/01); OJ of 06.01.1998 n° C 2 page 1.

4. The Council and the Representatives of the Governments of Member States, meeting within the Council, agreed to a Resolution on a code of conduct for business taxation. The Council also agreed on a text on the taxation of income from savings. The Commission undertook

- to submit rapidly proposals for Directives on the taxation of savings and on interest and royalty payments between companies, and
- to publish guidelines on the application of state aid rules to measures relating to direct business taxation.

5. In order to ensure the even and effective implementation of the Code of Conduct, the Council invited the Commission to report to it annually on the implementation of the Code and on the application of fiscal State aid. The Council further asked the Commission to submit each year, together with the report on the implementation of the Code, a progress report on the work concerning taxation of savings and interest and royalty payments between companies. This Communication contains the first annual report of the Commission.

2. THE IMPLEMENTATION OF THE CODE OF CONDUCT FOR BUSINESS TAXATION AND FISCAL STATE AID

2.1 THE CODE OF CONDUCT

6. The Code of Conduct covers measures which provide for a significantly lower (including zero) effective level of taxation than normally applies in the Member State concerned and which affect, or may affect, in a significant way the location of business activity within the Community. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor. The Code provides for a number of criteria to be taken into account when assessing whether such measures which fall within the scope of the Code are harmful, in the light of the effects they may have within the Community.

7. In agreeing to the Code of Conduct on business taxation Member States committed themselves to:

- refrain from introducing any new harmful tax measures (standstill)
- re-examine their existing laws and established practices and amend such laws or practices as necessary with a view to eliminating any harmful measures as soon as possible taking into account the Council's discussions following the review process (rollback);
- inform each other of existing and proposed tax measures which may fall within the scope of the Code;
- establish a group to assess the tax measures that fall within the scope of the Code and to oversee the provision of information on those measures, and
- promote the adoption of principles aimed at abolishing harmful tax measures in third countries and in territories to which the Treaty does not apply. In particular, Member States with dependent and associated territories or which have special responsibilities or taxation prerogatives in respect of other territories committed themselves, within the framework of their constitutional arrangements, to ensuring that these principles are applied in those territories.

8. The Code of Conduct Group (Business Taxation) was established by the ECOFIN Council on 9 March 1998[2] to assess the tax measures that may fall within the scope of the Code of Conduct and to oversee the provision of information on those measures. By common accord Mrs Primarolo (UK Financial Secretary to the Treasury) was appointed as Chair for the Group for a two year period. Two sub-groups, chaired by Mrs Primarolo and Mr Nolz (Director General of the Austrian Ministry of Finance), were established[3] to undertake a preliminary examination of a range of potentially harmful measures that the Code of Conduct Group had agreed to assess first and report back to the main group. These measures fall within the categories of intra group services and financial services and offshore companies.

9. All Member States have contributed to the exchange of information process by providing details of the tax measures which might fall under the scope of the Code of Conduct. These have been categorised as intra group services, financial services and offshore centres, other sector specific measures, regional incentives, and other measures. The Commission has co-ordinated and facilitated the provision of this information. Where appropriate, Member States have subsequently provided detailed information, in terms of relevant legislation, administrative practices and detailed explanations regarding measures falling within the work of the two sub-groups. The Commission compiled summaries of all the measures to be reviewed by the two sub-groups to provide basic information on the benefits they provide and the conditions attached.

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2 Council Conclusions of 9 March 1998 concerning the establishment of the Code of Conduct group (business taxation) (98/C 99/01); OJ of 01.04.1998 n° C 99 page 1.

3 Council Conclusions of 6 July 1998 concerning the establishment of sub-groups to the Code of Conduct Group.

10. Member States have, to the knowledge of the Commission, refrained from introducing any new tax measures which are harmful within the meaning of the Code. Some proposed new measures have been referred to the Code Group for future consideration. The Commission notes that some measures which might fall within the scope of the Code have already been withdrawn or are being phased out in some Member States.

11. The Code of Conduct group will be making an interim report to the Council on 1 December 1998 setting out in more detail progress reached so far in the assessment of the measures which might fall within the scope of the Code.

12. In the context of promoting the adoption of principles aimed at abolishing harmful tax measures on as broad a geographical basis as possible, it should be noted that the OECD Council in April 1998 adopted a report on Harmful Tax Competition and the G7 has also demonstrated its commitment to the further work on harmful tax competition. The OECD report provides for a set of guidelines for dealing with harmful preferential regimes in OECD Member countries, for the development of an OECD tax haven list and for the establishment of a Forum on Harmful Tax Practices to oversee the implementation of the recommendations in the report.

2.2 FISCAL STATE AID

13. Some of the tax measures covered by the Code of Conduct on business taxation may fall within the scope of the provisions on state aid in Articles 92 to 94 of the Treaty. In the framework of the Code of Conduct the Commission committed itself to publish guidelines on the application of the state aid rules to fiscal aids. The guidelines were discussed with experts from the Member States and a notice including them was subsequently adopted by the Commission on 11 November 1998[4].

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4 Commission notice on the application of the state aid rules to measures relating to direct business taxation, SEC (1998) 1800 final.

14. The guidelines aim at clarifying the application of the state aid rules to cases relating to direct business taxation. They form part of a wider objective of clarifying and reinforcing the application of the state aid rules in order to reduce distortions of competition in the Single Market.

15. The Commission will, on the basis of the guidelines set out in the notice, examine the tax aid plans notified to it and any tax aid implemented in the Member States and will review existing systems. The Commission will take account of all specific circumstances in each individual case.

3. PROGRESS ON WORK CONCERNING THE TAXATION OF SAVINGS AND INTEREST AND ROYALTY PAYMENTS BETWEEN COMPANIES

3.1 TAXATION OF SAVINGS

16. The Commission adopted in May 1998[5] a proposal for a directive on savings. The proposal is based on the key elements agreed by the ECOFIN Council on 1 December 1997 and takes into account the discussions in the Taxation Policy Group in February 1998. The Commission proposed the co-existence of a withholding tax of 20% and a system for providing information to tax authorities of other Member States.

17. The proposal was presented to the Council in June. The Austrian Presidency has taken negotiations forward in the Council and several meetings of the Council financial questions group have been arranged to discuss different aspects of the proposal.

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5 Proposal for a Directive to ensure a minimum of effective taxation of savings income in the form of interest payments within the Community, COM(1998) 295 final - O.J. of 08.07.1998 n° C 212 page 13.

18. The European Parliament and the Economic and Social Committee have begun their examination of the proposal for a Directive. It is foreseen that the opinions of both institutions will be adopted in early 1999.

19. In order to preserve the competitiveness of the financial markets of the Community in the global context, equivalent measures to ensure a minimum of effective taxation should be adopted as widely as possible. At the informal meeting of the ECOFIN Council in September the importance of the third country problem was emphasised. It was agreed that this question should be tackled rapidly and the Commission was invited to present outlines for solutions. The Commission services are presently finalising this document on the basis of a wide-ranging discussion held at the Taxation Policy Group on 12 November 1998.

3.2. TAXATION OF INTEREST AND ROYALTY PAYMENTS BETWEEN COMPANIES

20. The Commission presented in March 1998 a proposal for a directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States[6]. The proposal aims at eliminating obstacles to cross-border co-operation between companies from different Member States, such as a possible double taxation of such payments.

21. The negotiations at technical level in the Council started under the UK Presidency and continued under the Austrian Presidency, which pursued the negotiations in order to make as much progress as possible towards an early adoption.

22. The Economic and Social Committee gave a favourable opinion on 1 July 1998[7]. The European Parliament gave a favourable opinion on 16 September 1998.

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[6] Proposal for a Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States; COM(1998) 67 final of 04.03.1998 – O.J. of 22.04.1998 n° C 123 page 9.

[7] O.J. of 14.09.1998 n° C 284.

4. CONCLUSIONS

23. At its meeting in Cardiff on 15 and 16 June 1998, the European Council reaffirmed its commitment to fostering tax efficiency and discouraging harmful tax competition. In this context, the European Council welcomed the establishment of the Code of Conduct Group and its intention to present a preliminary report to the Council by the end of 1998.

24. Ministers expressed their firm commitment to a rigorous implementation of the tax package at the informal meeting of the ECOFIN Council in Vienna in September 1998. They gave high priority to the implementation of the Code of Conduct and agreed to aim at concrete results with regard to the taxation of savings by the end of the German Presidency.

25. The Council is asked to

- take note of this first annual report on the implementation of the Code of Conduct and fiscal state aids;
- take note of this progress report on the work concerning taxation of savings and interest and royalty payments between companies;
- confirm the objective of reaching concrete results in the negotiations on the proposal for a Directive on the taxation of income from savings by the end of June 1999;
- set the objective of reaching concrete results in the negotiations on the proposal for a directive on interest and royalty payments between associated companies for the end of June 1999; and
- reaffirm its commitment to a rapid implementation of the Code of Conduct and, within the context of the package to tackle harmful tax competition, ask the Code of Conduct Group to endeavour to complete the assessment of the measures which might fall within the scope of the Code by the end of June 1999.

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DOCUMENTS

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