EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

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ACTIVITIES
OF THE EUROPEAN UNION (EU)
IN THE TAX FIELD IN 2004

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DIRECTORATE-GENERAL
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ACTIVITIES OF THE EUROPEAN UNION (EU) IN THE TAX FIELD IN 2004

Note: Events and Commission initiatives which are not tax-specific but which contain an important tax dimension are included in the Annex to this Report.

1 PERSONAL AND CORPORATE TAXATION

1.1 Amendments to Interest and Royalties Directive[1]

The scope of the Directive was extended to encompass companies and taxes of the new Member States (Council Directive 2004/66/EC). In conjunction therewith, some of the new Member States were granted transitional arrangements which meant that those Member States would not have to apply the Directive, or would not have to apply in full, immediately on accession (Council Directive 2004/76/EC).

1.2 Savings Taxation[2]

The Council on 19 July adopted a decision establishing the application date of 1 July 2005 for the Council Directive to allow effective taxation of interest income from cross-border investment of savings that is paid to individuals within the EU. The Council had adopted this Directive as part of a package of three measures to combat harmful tax competition in June 2003, but postponed until the end of June 2004 its decision on whether the conditions had been met for the provisions of the Directive to be applied in the EU. During the course of 2004 the EU also signed Agreements concerning the taxation of savings with Switzerland, Andorra, Liechtenstein, Monaco and San Marino. All the agreements are based on the four following elements:

- **Withholding Tax:** Paying agents in the third countries will be required to withhold tax on interest payments to EU individuals at the same rates as Belgium, Luxembourg and Austria under the Savings Directive - 15% during the first three years, 20% for the subsequent three years and 35% thereafter. The three countries will share the revenue of the tax withheld, transferring 75 per cent of the revenue to the tax authorities of the individual's Member State of residence.

- **Voluntary disclosure of information:** The retention tax will not be applied if the EU resident taxpayer authorises the paying agent to disclose information on the interest payment to his tax authorities.

[1] http://europa.eu.int/comm/taxation_customs/taxation/company_tax/interests_royalties/index_en.htm
[2] http://europa.eu.int/comm/taxation_customs/taxation/personal_tax/savings_tax/index_en.htm

- **Review clause** stating that the Contracting Parties shall consult with each other at least every three years or at the request of either Contracting Party with a view to examining and if necessary improving the technical functioning of the Agreement, taking into account international developments.

- **Exchange of information upon request**: For income covered by the draft Agreements, the third countries will grant exchange of information on request for cases of fraud or comparable misbehaviour.

The Agreements will enter into force once they are ratified by the respective parties and are intended to have effect from 1 July 2005.

1.3 Company taxation[3]

Following a discussion on company taxation in the EU at the informal meeting of EU Economics and Finance Ministers in the Hague in September 2004, a large majority of Ministers supported the creation of a working group of Member States, chaired by the European Commission, to advise the Commission on the various elements of a common consolidated corporate tax base (CCCTB) for calculating their EU-wide taxable profits. The Ministers discussions were based on two Commission non-papers that are available on the Commission's website[4], one on the common tax base and one on the separate issue of a possible Home State Taxation pilot scheme for SMEs. The Commission has now established the working group on the CCTB and the group is active. Information on its mandate and the relevant working papers will be published on the Commission's tax service's website. For information on the Commission's work in the field of company taxation compliance costs and on analysing the potential competition and discrimination issues relating to a pilot project for an EU tax consolidation scheme for the European Company statute (Societas Europaea) see under section 14 below (Publications).

1.4 Mergers Directive[5]

The Council in December 2004 reached political agreement on a proposal to amend the EU Directive for tax deferral in the case of cross-border mergers and divisions of companies, transfers of assets and exchanges of shares. The amendment that is based on a Commission proposal of October 2003 would, in particular, broaden the existing Directive's scope to cover a larger range of companies including the European Company[6] and the European Co-operative Society[7]; provide for a new tax neutral regime for the transfer of the registered office of a European Company or of a European Cooperative Society between Member States; clarify that the Directive applies in the case of the conversion of branches into subsidiaries; and cover a new type of operation, known as a 'partial division' or 'split-off'.

1.5 Harmful tax competition - report of Code of Conduct Group[8]

The Council in December 2004 took note of a report from the Code of Conduct Group on Business Taxation concerning the implementation by Member States of "standstill"

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[3] http://europa.eu.int/comm/taxation_customs/taxation/company_tax/gen_overview/index_en.htm
[4] http://europa.eu.int/comm/taxation_customs/taxation/company_tax/common_tax_base/index_en.htm

[5] http://europa.eu.int/comm/taxation_customs/taxation/company_tax/mergers_directive/index_en.htm
[6] Council Regulation (EC) 2157/2001 and Council Directive 2001/86/EC)
[7] (Council Regulation (EC) 1435/2003 and Council Directive 2003/72/EC)
[8] http://europa.eu.int/comm/taxation_customs/taxation/company_tax/harmful_tax_practices/index_en.htm

(refraining from introducing any new harmful business tax measures) and "rollback" (amending any laws or practices that are deemed to be harmful in respect of the principles of the Code). The Code of Conduct that the Council formally implemented as part of a tax package in June 2003 requires Member States to refrain from introducing any new harmful business tax measures ("standstill") and amend any laws or practices that are deemed to be harmful in respect of the principles of the Code ("rollback"). The code covers tax measures (legislative, regulatory and administrative) which have, or may have, a significant impact on the location of business in the Union.

1.6 Transfer pricing[9]

The Council in December 2004 adopted a Code of Conduct to eliminate the double taxation that can arise where an EU Member State, by making a transfer pricing adjustment, increases the taxable profits of a company from its cross-border intra-group transactions. The Code will ensure a more effective and uniform application by EU Member States of the 1990 Arbitration Convention[10] that is designed to deal with such double taxation. The Code establishes rules such as the starting points of time limits for dealing with complaints and practical arrangements concerning the mutual agreement and arbitration phases of the Convention. It recommends the suspension of tax collection during the dispute resolution period. The Code is based on a Commission proposal of April 2004 arising from the work of the EU Joint Transfer Pricing Forum. The Council also welcomed the Commission's decision to prolong the work of the "EU Joint Transfer Pricing Forum" for a further two years. The Council at the same meeting also finalised a draft Convention to extend the scope of the Arbitration Convention to the EU Member States that joined the EU on 1 May 2004. Following this agreement by the Council, it will have to be signed and ratified by each of the 25 EU Member States. The draft Convention contains a provision allowing bilateral application of the Convention between those Member States that have ratified it, which will allow the Convention to become partially applicable even if the implementation of the Convention in all 25 Member States may be a lengthy process

2 VALUE ADDED TAX (VAT)

2.1 VAT Invoicing[11]

Council Directive 2001/115/EC came into force from 1st January 2004 in existing EU Member States and from 1 May 2004 in the Accession Countries. It harmonises, simplifies and modernises the invoicing obligations with which traders must comply when they sell goods or services that are subject to VAT. It also creates an EU legal framework for electronic transmission and storage of invoices.

This means that a trader in the EU will now only have to comply with one set of rules for all the invoices he issues, irrespective of where the goods or services he is supplying are taxable. Any invoice complying with these rules will be acceptable for VAT purposes throughout the EU by all tax administrations.

[9] http://europa.eu.int/comm/taxation_customs/taxation/company_tax/transfer_pricing/index_en.htm
[10] 90/436/EEC
[11] http://europa.eu.int/comm/taxation_customs/taxation/vat/traders/invoicing_rules/index_en.htm

2.2 VAT - Implementing measures concerning VAT rules

The Council in January 2004 adopted a Directive[12] which gave the Council the power to adopt measures necessary to ensure the correct implementation of existing VAT rules. Previously, consistency in the VAT treatment of a limited number of specific cases had been reached through guidelines drawn up by an Advisory Committee of experts of Member States working with the Commission (the "VAT Committee"). However these guidelines have no legal status and are not, therefore, binding on tax administrations. Furthermore, the guidelines are not published, so traders do not have access to them.

2.3 Reduced rates on labour-intensive services[13]

The Council on 10 February 2004 adopted a Commission proposal[14] to allow nine Member States to continue to apply for an additional two years (i.e. until 31 December 2005) the reduced rates of Value Added Tax (VAT) they currently apply to specified labour-intensive services such as renovation of private dwellings, hairdressing, window-cleaning and small repairs. Directive 1999/85/EC allowed those Member States that so chose (see IP/99/1002) to apply a reduction of VAT on these services for an experimental period from 1 January 2000 to 31 December 2002 (later extended to end 2003), in order to test the impact of such a reduction in terms of job creation and of combating the black economy. In response to requests from the EU's Council of Ministers and the European Parliament, the Commission decided to propose in December 2003 the present further extension for two years because Member States have not so far agreed on the Commission's July 2003 proposal to rationalise and simplify the overall rules for reduced rates of VAT. The Commission on 21 April presented a proposal for a Directive to allow new Member States to apply, until 31 December 2005, reduced rates to some labour intensive services, together with a proposal for a decision to authorise the Czech Republic and Poland to apply such reduced rates. This proposal has yet to be adopted unanimously by the Council.

2.4 Proposal concerning recast of Sixth VAT Directive

The Commission on 15 April presented a proposal[15] for a recast of the existing text of the 6th VAT Directive (77/388/EC). The key objective of the recast is to rationalise and simplify current VAT legislation. The proposal has to be adopted unanimously by the Council after consultation of the European Parliament and the European Economic and Social Committee

2.5 Proposal for a VAT one-stop shop

The Commission in October 2004 presented a proposal[16] to simplify current VAT compliance obligations to help cross-border traders who supply goods and services to other EU Member States. In particular the proposal would provide for a “one-stop-shop” system whereby a trader could fulfil all his VAT obligations for EU-wide activities in the Member State in which he is established. This system would allow traders to use a single VAT number for all supplies made throughout the EU and to make VAT declarations to a single electronic portal that would then be submitted automatically to the different Member States to which the trader

[12] 2004/7/EEC
[13] http://europa.eu.int/comm/taxation_customs/taxation/vat/how_vat_works/labour_intensive_services/index_en.htm
[14] COM(2003)825
[15] COM(2004)246
[16] COM(2004)728

supplies goods or services. The proposal also contains five other simplification measures. Studies including the Commission's European Tax Survey[17] have demonstrated that VAT obligations are at present extremely burdensome and costly for cross-border activity. It takes into account opinions expressed during a public consultation held earlier in 2004[18].

2.6 VAT - Proposal for regulation to simplify/clarify interpretation of common rules

The Commission in October 2004 presented a proposal[19] for a Council Regulation that would ensure more uniform application of the common VAT rules in the Community, thus providing transparency and legal certainty both for traders and for national administrations. The Regulation would give legal force to some interpretations of elements of VAT law such as "electronically supplied services", the place of supply of different types of services and the scope of exemptions from VAT. EU Member States working with the Commission in a Committee have over the years agreed on guidelines concerning these points. However, the guidelines have no legal force and are not published. The VAT Sixth Directive provides the general framework for an EU-wide system of VAT, but does not contain rules concerning the interpretation and application of the VAT system. Differences in the practical application by the Member States of the common VAT rules constitute major obstacles for firms wishing to take advantage of the Internal Market.

2.7 Council decisions concerning individual Member States

Individual Member States are entitled to request authorisation of the Council to apply special rules that depart from normal VAT rules for reasons such as to prevent fraud and tax evasion or to introduce simplification. Such a request must be submitted to the Commission which, if it considers the request justified, will make a proposal on this basis for consideration by the Council.

For VAT derogations authorised for individual Member States in 2004 see:

http://europa.eu.int/comm/taxation_customs/taxation/vat/key_documents/table_derogations/index_en.htm

3 EXCISE DUTIES AND OTHER TAXES

3.1 Energy taxation[20]

The EU Energy Directive entered into force on 1 January 2004. It widens the scope of the EU's minimum rate system, previously limited to mineral oils, to all energy products including coal, natural gas and electricity.

The Commission presented a proposal in January 2004 that was adopted by the Council in April 2004 amending the Energy Tax Directive so as to allow the new EU Member States temporarily to apply excise duty exemptions or lower rates of duty than the EU-wide minimum rates normally required on all energy products (mineral oils, coal, natural gas) and electricity. The varying arrangements proposed cover all the accession countries. The

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[17] http://europa.eu.int/comm/taxation_customs/common/publications/services_papers/working_papers/index_en.htm
[18] http://europa.eu.int/comm/taxation_customs/common/consultations/tax/article_971_en.htm
[19] COM(2004)641
[20] http://europa.eu.int/comm/taxation_customs/taxation/excise_duties/energy_products/index_en.htm

arrangements are along the lines of those allowed to existing Member States. In particular, they are strictly limited in time and generally last no longer than 2012; they are proportionate to the effective problems that they are designed to address; and, where relevant, they include a progressive alignment towards the relevant EU minimum rates. The likely price increases if excise duties had to be raised by 1 May 2004 in the accession countries could have negatively affected their economies and could in particular have constituted a heavy burden for small companies and for poorer households. The Directive[21] came into force on 1 May 2004, the date by which the new Member States were required to apply the Energy Tax Directive.

3.2 Proposal to simplify and liberalise the excise duty rules[22]

The Commission in April 2004 presented a proposal to simplify and liberalise the rules on intra-EU movements of products (mainly alcohol) on which excise duty has already been paid in a Member State. For private individuals, the proposal aims to clarify the existing rules on moving goods from one Member State to another, and to bring them more into line with the internal market principle that products acquired by private individuals for their own use should be taxed in the Member State in which they are bought. For goods moved for commercial purposes, the Commission proposes to maintain the basic principle that excise duty is payable in the Member State of destination, but to harmonise and simplify the procedures to be followed in that Member State. The Commission has found that both traders and European citizens find it difficult to comply with the law on excise duty in the Member State of destination. Since this situation is unacceptable in an Internal Market, the Commission wants to change the rules.

3.3 Report on alcohol taxation[23]

The Commission in May 2004 presented a report on the operation of the EU-wide system of minimum rates of excise duty on alcohol and alcoholic beverages with a view to launching a broad debate on the subject. The report considers the effect of the present system on the proper functioning of the Internal Market, the competition between the different types of alcoholic drinks due to differences in levels of excise duty, the current real value of the minimum rates that were set in 1992 and the wider objectives of the EU Treaty. The Commission concludes that more convergence of the rates of excise duty in the different Member States is needed so as to reduce distortions of competition and fraud. However, given the widely differing views in the Member States about the appropriate levels of the minimum rates, and given that any change would require unanimous agreement, the Commission is not making a proposal at this time. Instead the Commission wishes to launch a broad debate in the Council, the European Parliament and the Economic and Social Committee. On the basis of the outcome of this debate the Commission will decide whether or not to submit proposals on all or some of the issues raised in the report.

3.4 Council decisions concerning individual Member States

Under the Community harmonised rules providing minimum rates of excise duty for mineral oils, the Council may authorise a Member State to apply an exemption or a reduction in excise duty on fuel for specific policy considerations.

[21] 2004/74/EC and 2004/75/EC
[22] http://europa.eu.int/comm/taxation_customs/taxation/excise_duties/common_provisions/proposals/index_en.htm
[23] http://europa.eu.int/comm/taxation_customs/taxation/excise_duties/alcoholic_beverages/studies_reports/index_en.htm

- Taxation of energy products: Proposal for a Council Decision authorising France to apply differentiated levels of taxation to motor fuels[24]
- Taxation of energy products: Proposal for a Council Decision authorising the United Kingdom to apply an exemption from climate change levy for low value solid fuel in accordance with Article 19 of the Energy Tax Directive 2003/96/EC

4 TAX MEASURES DESIGNED TO TAKE ACCOUNT OF THE STRUCTURAL, SOCIAL AND ECONOMIC SITUATION OF THE OUTERMOST REGIONS OF THE EU

4.1 Dock dues in the French overseas departments

The Commission on 10 February 2004 adopted a Commission proposal[25] of December 2003 to authorise the French Overseas Departments (Guyana, Guadeloupe, Martinique and Reunion) to continue until 1 July 2014 tax exemptions or reductions from "dock dues" taxes for certain locally made products. In accordance with the requirements of the EC Treaty, the agreed measures favouring local produce are only those strictly necessary and proportionate and are justified in the light of the handicap of the remote geographical location of these Departments.

5 TAX AVOIDANCE AND EVASION MEASURES

5.1 Commission report on co-operation against VAT fraud.

The Commission on 16 April presented a report on the use of EU-wide co-operation in combating fraud in the field of Value-Added Tax (VAT). Though the exact amount of money involved in VAT fraud is difficult to quantify, some Member States have estimated their losses at up to 10% of net VAT receipts. There have been some major improvements in co-operation in this area in recent years, with the adoption of strengthened EU legislation (see IP/03/1350), the redesign of national control arrangements as a result of information-sharing on best practices, and improvements in the level and quality of mutual assistance between tax administrations. However, the Commission's report recommends that Member States take further steps to intensify administrative co-operation such as improving the exchange of information, increasing the human resources allocated to this work and removing remaining legal barriers (e.g. legislation on secrecy) to the fight against VAT fraud. The Commission notes that certain national authorities have recently suggested amending the VAT system itself in order to tackle the problem of VAT fraud but concludes that all the suggestions for change would have disadvantages that would outweigh their potential benefits.

5.2 Commission Regulation on closer administrative co-operation in the field of VAT

Commission Regulation 1925/2004, adopted on 29 October 2004, lays down detailed rules ofr implementing certain provisions of Council Regulation 1798/2003 on administrative co-operation in the field of VAT. This Regulation specifies the exact categories of information to

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[24] COM(2004) 597 of 14/09/2004

[25] COM(2003)792

be exchanged between the Member States, the frequency of those exchanges and the relevant practical arrangements.

5.3 Directive on closer administrative co-operation to combat fraud in the area of direct taxation and insurance premium taxes

The Council on 21 April 2004 adopted Directive 2004/56, on the basis of a Commission proposal, that is designed to speed up the flow of information between the tax authorities of Member States. The Directive which relates to direct taxation (income tax, company tax and capital gains tax), together with insurance premium taxes, enables Member States to co-ordinate their investigative action against cross-border tax fraud and to carry out more procedures on behalf of each other. The Directive is based on a Commission proposal of July 2003 (see IP/03/1226) and updates and rectifies weaknesses in the existing Directive on Mutual Assistance, 77/799/EEC. Modern technology and increased cross-border activity have made it more important than ever for information exchange and co-operation between tax administrations to be improved. A Council report on tax fraud of June 2000 noted that the existing EU directives and regulations were inadequate for the combat of fraud, which in the direct tax area involves, in particular, problems of under-invoicing and over-invoicing (transfer pricing). This Directive complements other recently adopted EU legislation in the field of information exchange (the above-mentioned agreement on savings taxation and the Regulation on strengthening administrative co-operation in the VAT area).

5.4 Regulation for closer administrative co-operation to combat fraud in the field of excise duties[26]

The Council on 16 November 2004 adopted Regulation 2073/2004 to strengthen co-operation between Member States' tax authorities so as to combat fraud in the field of excise duties on alcohol, tobacco and energy products[27]. The Regulation will ensure more direct contacts between local tax offices of Member States, so as to speed up information flows; establish clearer and more binding rules on cooperation between Member States; require more automatic and spontaneous information exchange (as opposed to information exchange on request); and improve the systems in place for the transmission of information. The Regulation, based on a Commission proposal of December 2003, is designed to complement the initiative to computerise the movement of excisable goods in the Community adopted in June 2003[28]and is the counterpart to rules strengthening administrative co-operation in the VAT[29] and direct tax fields[30] [31]adopted by the Council in recent years.

5.5 Mutual Assistance in Recovery of taxes[32]

Commission Directive 2004/79 extended to the 10 Member States that joined the EU on 1 May 2004 the provisions of Commission Directive 2002/94, which sets out detailed implementation arrangements concerning the EC Directive on mutual assistance between Member States in the recovery of tax debts. Directive 2002/94 deals with matters such as the

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[26] http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/mutual_assistance/excise_duty_proposal/index_en.htm

[27] Council Directive 2004/106 of 16 November 2004 has removed these excise duties from the scope of Directive 77/799 concerning mutual assistance between the Member States. All aspects of administrative co-operation in the excise field are now included in Regulation 2073/2004.

[28] http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/excise_products/index_en.htm

[29] http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/mutual_assistance/vat_administrative_regulation/index_en.htm

[30] http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/mutual_assistance/direct_tax_directive/index_en.htm

[31] http://europa.eu.int/comm/taxation_customs/taxation/personal_tax/savings_tax/index_en.htm

[32] http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/tax_recovery/index_en.htm

details of the electronic communication system, shorter deadlines for responses, simplification of administrative procedures and reimbursement arrangements for costs linked to recovery of debts.

6 PUBLIC CONSULTATIONS

Open dialogue involving the European Commission, stakeholders and interested parties helps ensure that existing rules and proposals for new rules are designed to keep pace with the reality of rapid change. This dialogue helps to achieve the regulatory efficiency we need to foster best administrative and legislative practice tailored to meet the needs of business in the European Union in the third millenium. The Commission is responding to ever-wider use of the Internet by making greater use of Interactive Policy Making (IPM) and similar Internet-based tools as an additional means of evaluating existing EU policies and of conducting consultations on new initiatives. It hopes that businesses, consumers and citizens will use these tools wherever possible, to help it to respond faster and more accurately to their needs. The following is the list of tax consultations opened in 2004 and/or reports published in 2004 on outcomes of public consultations. For consultations and discussion fora in other fields, please consult "Your Voice in Europe[33]".

- VAT: public consultation on One-Stop-Shop project[34]
- Home State Taxation for SMES[35]
- Passenger Car Taxation[36]
- Report on outcome of the Commission's public consultation on the recast of the Sixth VAT Directive[37]

7 ENLARGEMENT OF THE EU

7.1 Adaptation of Community acquis

For the specific arrangements that were granted during the accession negotiations to the new Member States that joined the EU on 1 May 2004 see:
http://europa.eu.int/comm/taxation_customs/common/international_affairs/enlargement/index_en.htm

7.2 Future enlargement negotiations

During the Brussels European Council of 16-17 December 2004, the following was concluded:

- Accession of Bulgaria and Romania to the EU is scheduled for 1 January 2007

[33] http://europa.eu.int/yourvoice/
[34] http://europa.eu.int/comm/taxation_customs/common/consultations/tax/article_971_en.htm
[35] http://europa.eu.int/comm/taxation_customs/common/consultations/tax/article_1455_en.htm
[36] http://europa.eu.int/comm/taxation_customs/common/consultations/tax/article_969_en.htm
[37] http://europa.eu.int/comm/taxation_customs/common/consultations/tax/article_974_en.htm

- Accession negotiations with Croatia are to be initiated on 17 March 2005, provided that there is full co-operation with the International Criminal Tribunal for the former Yugoslavia

- Accession negotiations with Turkey are to be initiated on 3 October 2005-02-03

The Former Yugoslav Republic of Macedonia (FYRoM) submitted its application for membership of the EU on 22 March 2004, and within that context the Council has requested the Commission to present its opinion on this request which is expected in the autumn 2005.

7.3 The Cyprus Issue

Following the two separate simultaneous referendums in the two Cypriot communities of 24 April 2004, the Council decided on 26 April 2004 to put an end to the isolation of the Turkish Cypriot community and to facilitate the reunification of Cyprus by encouraging the economic development of the Turkish Cypriot community. Within that framework Council Regulation (EC) No 866/2004 on a regime under Article 2 of Protocol No 10 of the Act of Accession was adopted on 29 April 2004. In order to facilitate intra-Cypriot trade the Regulation stipulates inter alia that, on certain conditions, certain goods crossing the so-called "Green Line" from the Turkish Cypriot Community will not be treated as imports in respect of VAT and excise duties, provided that the goods concerned are destined for consumption in the Republic of Cyprus.

7.4. Technical assistance

Technical assistance (TA) activities to third countries in the field of taxation were primarily focussed on supporting the ten new Member States in their preparations for EU membership on 1 May 2004. The core strategic objectives in the taxation pre-accession strategy were to provide support to ensure full legislative alignment to the Community acquis, except for the areas where special arrangements had been granted during the accession negotiations, and to the modernisation process of the countries' tax administrations, including operational capacity to apply and enforce the Community acquis. With the approach of the date of accession, technical assistance was increasingly focussing on administrative capacity, including IT inter-connectivity and inter-operability.

8 FISCAL STATE AID DECISIONS

The State aid provisions of the EC Treaty provisions apply when a tax measure is discriminatory and provides an advantage only to certain enterprises, or certain activities. The Commission has been given the exclusive power under the Treaty to take decisions on whether or not aid granted by Member States is compatible with the Treaty. The Commission may require that illegally granted aid be repaid by recipients to the public authorities which granted it. The Member State must recover the aid immediately in accordance with domestic procedures. Commission decisions can be challenged before the European Court of Justice. On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered compatible with the common market, if such a decision is justified by exceptional circumstances.

For decisions on fiscal state aid cases see the state aid register on the website of the Directorate General for Competition of the European Commission at:

http://europa.eu.int/comm/competition/state_aid/register/ii/#by_instrument

9 INFRINGEMENT PROCEEDINGS LAUNCHED BY THE COMMISSION

The Commission is the 'guardian of the Community Treaties'. It monitors the Member States' application and implementation of primary and secondary Community legislation, institutes infringement proceedings in the event of any violation of Community law (Article 226 EC) and, if necessary, refers the matter to the Court of Justice. The Commission also intervenes if Community law is infringed by any natural or legal person and imposes heavy penalties. Over the last few years, efforts to prevent abuse of Community rules have become a major part of the Commission's work.

The Twenty First Annual Report on monitoring the application of Community law (2003) was published in 2004[38].

See also the press releases on infringements on the website of the Directorate General for Taxation and the Customs Union[39].

10 EUROPEAN COURT OF JUSTICE JUDGEMENTS

For judgements of the European Court in 2003 in the tax field see the website of the ECJ at http://curia.eu.int/en/index.htm.

See also website of the Directorate General for Taxation and theCustoms Union at http://europa.eu.int/comm/taxation_customs/common/legislation/case_law/index_en.htm

11 ACTIVITIES OF THE EUROPEAN PARLIAMENT

Like all parliaments, the European Parliament has three fundamental powers: legislative power, budgetary power and supervisory power. The European Constitution confirms and reinforces this triple role. In the ordinary legislative procedure the European Parliament and the Council of Ministers together adopt legislation proposed by the Commission. Parliament therefore has to give its final agreement. In the tax field, however, the European Parliament provides its opinion on Commission proposals in the tax field but the proposal is not adopted unless there is unanimous agreement by the EU's Council of Ministers. Second, the European Parliament and the Council are the two arms of the budgetary authority. Parliament exercises democratic oversight of all Community activities. In this context, it can set up committees of enquiry, table questions on Commission proposals and it plays a central role in appointing the Commission.

[38] http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#infractions

[39] http://europa.eu.int/comm/taxation_customs/publications/official_doc/press_releases_2004_en.htm#infrac plus http://europa.eu.int/comm/taxation_customs/index_en.htm

The Opinions delivered in 2004 on tax issues by the Parliament's Committee for Economic and Monetary Affairs[40] and the Committee for Legal Affairs and the Internal Market[41] are to be found on the Parliament's website.

Parliamentary Questions on tax subjects are found on the Parliament’s database at http://www.europarl.eu.int/questions/default_en.htm

The Parliament's hearings of the Commissioners designate in late 2004 are to be found at: http://www.europarl.eu.int/hearings/commission/2004_comm/default_en.htm

12 ACTIVITIES OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE (ECOSOC)

This Committee is also required to provide its opinion on Commission proposals in the tax field. It can also provide opinions in the taxation field at it own initiative. See website at: http://www.esc.eu.int/pages/en/home.asp

13 ACTIVITIES OF THE COMMITTEE OF THE REGIONS

The Committee of the Regions adopts opinions on tax proposals that have regional implications. See website at http://www.cor.eu.int/

14 TAX PUBLICATIONS OF THE EUROPEAN COMMISSION IN 2002

14.1 Speeches.

See: *http://europa.eu.int/comm/taxation_customs/common/about/speeches/index_en.htm*

14.2 Publications produced by or on behalf of the Directorate-General for Taxation & the Customs Union or by officials of the Directorate-General

14.2.1 Taxation papers series.

The Directorate General for Taxation and the Customs Union launched the "Taxation papers" series in 2004 with the objective of contributing to the debate on taxation in the European Union. It will of a series of working papers written by Commission staff or by experts working in association with them. In common with other working papers series, it will not have a fixed duration. Responsibility for "Taxation papers" rests solely with the authors and, in this regard, they do not necessarily represent the position of the European Commission.

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http://www2.europarl.eu.int/omk/sipade2?PROG=REPORT&L=EN&SORT_ORDER=D&S_REF_A=%25&PUBREF=&PART=&NAV=S&LEG_ID=6&COM_ID=813&LEVEL=2
and
http://www2.europarl.eu.int/omk/sipade2?PROG=REPORT&L=EN&SORT_ORDER=D&S_REF_A=%25&PUBREF=&PART=&NAV=S&LEG_ID=5&COM_ID=620&LEVEL=3

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http://www2.europarl.eu.int/omk/sipade2?PROG=REPORT&L=EN&SORT_ORDER=D&S_REF_A=%25&LEG_ID=5&COM_ID=619&LEVEL=4&SAME_LEVEL=1&SV=20&NAV=S

- VAT indicators[42]
- European Tax Survey[43] based on a questionnaire concerning company taxation and VAT compliance costs in the EU that the Commission sent to more than 2000 companies in September 2003, via the European Business Test Panel[44].
- Tax based EU own resources: an assessment[45]

14.2.2 Other publications

- Study on analysis of potential competition and discrimination issues relating to a pilot project for an EU tax consolidation scheme for the European Company statute (Societas Europaea)[46]
- VAT rates in 25 Member States[47]
- The Structures of the Taxation systems in the EU[48] published on 1 July 2004 by the Commission's Taxation and Customs Union Directorate-General and Eurostat, the EU's statistical office. In the publication tax systems are compared within a unified statistical framework at different levels of aggregation and classifications of tax revenues based on the European National Accounts. The framework makes it possible to monitor the evolution of heterogeneous national taxation systems and the levels of the tax burdens in the 25 Member States and Norway .
- Table of the main expiry dates for VAT reduced rates derogations[49]
- VAT obligations in the Member States[50]
- The excise duty rates applicable in Member States[51]
- VAT in the European Community[52]
- Inventory of taxes in the Member States of the European Union[53]
- Developments in the financing of the European Union[54]

[42] http://europa.eu.int/comm/taxation_customs/common/publications/services_papers/working_papers/index_en.htm
[43] http://europa.eu.int/comm/taxation_customs/common/publications/services_papers/working_papers/index_en.htm
[44] http://europa.eu.int/yourvoice/ebtp/index_en.htm
[45] http://europa.eu.int/comm/taxation_customs/common/publications/services_papers/working_papers/index_en.htm
[46] http://europa.eu.int/comm/taxation_customs/resources/documents/report_deloitte.pdf
[47] http://europa.eu.int/comm/taxation_customs/taxation/vat/how_vat_works/rates/index_en.htm
[48] http://europa.eu.int/comm/taxation_customs/taxation/gen_info/economic_analysis/tax_structures/index_en.htm
[49] http://europa.eu.int/comm/taxation_customs/resources/documents/echeances_taux_TVA_en.pdf
[50] http://europa.eu.int/comm/taxation_customs/resources/documents/descriptive_report.pdf
[51] http://europa.eu.int/comm/taxation_customs/taxation/excise_duties/alcoholic_beverages/rates/index_en.htm
[52] http://europa.eu.int/comm/taxation_customs/taxation/vat/traders/vat_community/index_en.htm
[53] http://europa.eu.int/comm/taxation_customs/taxation/gen_info/info_docs/tax_inventory/index_en.htm
[54] http://europa.eu.int/comm/taxation_customs/resources/documents/financing_the_eu-fr.pdf

15 CONFERENCES AND SEMINARS ORGANISED BY THE EUROPEAN COMMISSION

15.1 Fiscalis Seminars (Co-operation between tax administrations under the Fiscalis programme[55]):

Seminars constitute a good framework for the exchange of ideas on particular topics between officials of the national administrations, Commission representatives and other experts, if necessary. From the seminars suggestions may emerge for improving the legal instruments in force or facilitating co-operation between administrations. In 2004, seminar topics included:

- Simplified Procedures for Movement of Excisable Goods (Egmond aan Zee)
- Heads of Central Liaison Offices Meeting (Budapest)
- Heads of Excise Liaison Offices Meeting (Birmingham)
- Improvement in the Quality of Multilateral Controls (Egmond aan Zee)
- Tax compliance of small and medium enterprises (Venice)
- VAT on e-services (Arhus)
- The challenge of VAT carousel and refund fraud (St. Julians)
- Mutual assistance at regional level (Sofia)
- Joint and several liability and other strategies to collect VAT lost due to mission gtrader fraud (Sundsvall)
- E-audit techniques (Bad Hofgastein)
- Mutual assistance in recovery of tax debts (Bruges)
- VAT on financial services (Dublin)
- The impact of EU case law on national tax rules concerning mobile and frontier workers, and on cross-border occupational pension provision (Helsinki)
- Training seminars for Candidate countries on direct taxation, risk analysis, special VAT schemes, transfer pricing, computer audit, VAT warehouse arrangements, carousel fraud and e-services.

[55] http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/fiscalis_programme/index_en.htm

ANNEX

GENERAL COMMISSION INITIATIVES WITH A SIGNIFICANT TAX DIMENSION

1. Report on European Community "own resources"[56]

The Commission reported in July 2004 on the current funding system for the EU. The current system has provided stable resources for the EU budget, but has become less transparent over time. It also depends increasingly on transfers from national treasuries, instead of being based on real "own resources", as foreseen by the EC Treaties. The Commission's "own resources" report therefore proposed that the Council reflect on the introduction by 2014 of a new funding system for the EU, centred around a main fiscal resource based on either energy, VAT or corporate income tax. This would increase understanding by citizens of the resources going to the budget and make decision makers more accountable. This tax based resource would replace existing resources and would therefore be neutral in terms of the level of EU funding.

2. Regulation to enhance effectiveness of fight against fraud[57]

The Commission in September 2004 adopted a draft regulation aiming to enhance the effectiveness of the fight against fraud through increased administrative cooperation with and between the Member States. The relevant national authorities of different Member States will have the duty to provide information and surveillance assistance to each other upon request. The Commission will have access to this information, so as to facilitate and coordinate Member States' anti-fraud activities through the relevant risk-related analyses. This regulation for mutual administrative assistance covers large scale transnational VAT fraud, money laundering of profits stemming from EU fraud, structural funds and other subsidies from the EU budget. The cooperation will focus on serious transnational cases of at least € 500.000 in fiscal damage in cases of VAT fraud, and of € 100.000 in other cases.

3. Broad strategy to prevent financial and corporate malpractice[58]

The Commission in September 2004 adopted a strategy for co-ordinated action in the financial services, company law, accounting, tax, supervision and enforcement areas, to reduce the risk of financial malpractice. In the tax field, the Commission suggests more transparency and information exchange in the company tax area so that tax systems are better able to deal with complex corporate structures. Issues that will be examined include possible improvements to the EU Mutual Assistance Directive[59], developing common definitions of tax fraud and avoidance, exchanges of experience and best practice between tax administrations, the use of new technology to improve information exchange, and, in the longer term, examining with Member States the use of a common company identification number for company tax purposes.

The Commission also wishes to ensure coherent EU policies concerning offshore financial centres, to encourage these jurisdictions also to move towards transparency and effective exchange of information.

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[56] http://europa.eu.int/comm/budget/furtherinfo/index_en.htm#financing
[57] *REF. TO BE ADDED*
[58] COM(2004)611final
[59] 77/799/EEC