EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

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ACTIVITIES
OF THE EUROPEAN UNION (EU)
IN THE TAX FIELD IN 2005

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1. General

1.1. Modernising Europe to meet the challenges of globalisation and ageing

The European Commission's October Report 'European Values in a Globalised World', its contribution to the Informal Summit of Heads of State and Government on 27 October in the UK states that unless we are able to change, the forces of global competition, the impact of new technologies and our ageing population will call our economic success and the financial viability of our social systems – pensions, welfare, health – into question. There is an urgent need to move ahead with economic reforms and the modernisation of our social systems. Europe must reform and modernise its policies to preserve its values. Modernisation is essential to continue keep Europe's historically high levels of prosperity, social cohesion, environmental protection and quality of life. Inter alia, there is a need to look closely at making current tax systems perform better across the EU. A more coordinated approach at the EU level and more effective administrative co-operation between Member States could significantly improve the performance of tax systems. This could help to keep economic activity and "mobile" assets (capital, companies) in the EU, while avoiding the risk of concentrating tax on less mobile bases like labour[1].

1.2 Tax Actions to boost Europe's Competitiveness

The European Commission in October adopted a comprehensive plan[2] of EU-wide taxation and customs measures that would help the EU to achieve its Lisbon objectives. The plan lists existing and forthcoming Commission taxation and customs initiatives aimed at reducing compliance costs and red tape; helping Member States to maintain stable revenue streams; generating more competition in the markets; boosting trade; and encouraging research and development. The measures proposed are not intended to change the structure of Member States' tax systems or to impinge on their national fiscal sovereignty. Instead they are simply aimed at reducing the negative effects which co-existing national tax systems can have on market integration.

2. Personal and corporate taxation

2.1. Mergers Directive

The Council in February 2005 adopted a Directive[3], on the basis of a proposal by the Commission of October 2003 that amends the EU Directive that provides for tax deferral in the case of cross-border mergers and divisions of companies, transfers of assets and exchanges of shares (90/434/EEC). The amendment will, in particular, broaden the existing Directive's scope to cover a larger range of companies including the European Company and the European Co-operative Society; provide for a new tax-neutral regime for the

[1] http://europa.eu.int/growthandjobs/pdf/COM2005_525_en.pdf

[2] http://europa.eu.int/comm/taxation_customs/resources/documents/COMM_PDF_COM_2005_0532_F_EN_ACTE.pdf

[3] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_058/l_05820050304en00190027.pdf

transfer of the registered office of a European Company or of a European Co-operative 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'.

2.2 Savings Directive

The Council of Ministers of the European Union, at its meeting of 24 June 2005, adopted the "Green light note" which triggers the application, by the 25 Member States of the European Union, five European third countries and ten associated and dependent territories of Member States, of agreed savings tax measures from 1 July 2005[4]. The Directive thus took effect on 1 July[5]. Under the Directive, each EU Member State will ultimately be expected to provide information to other Member States on interest paid from that Member State to individual savers resident in those other Member States. But for a transitional period, Belgium, Luxembourg and Austria will apply a withholding tax instead of providing information, on interest income that is paid to individual savers resident in other EU Member States. The rate will be 15% for the first three years (1 July 2005-30 June 2008), 20% for the subsequent three years (1 July 2008-30 June 2011) and 35% from 1 July 2011 onwards). These three Member States will then transfer the 75% revenue of the tax withheld to the tax authorities of the resident's Member State, retaining 25% to cover their administrative costs in applying the withholding tax. However, the withholding tax will not be applied if the taxpayer presents a certificate from the tax authorities of his Member State of residence that confirms that they are aware of the investment made abroad (Luxembourg will also allow the individual to opt instead to authorise the paying agent to disclose the information to the tax authorities). There will be no need in that case for a withholding tax because the tax authorities of the taxpayer's Member State of residence will be in a position to subject the interest to the same tax rules as interest earned domestically.

2.3. Code of Conduct concerning transfer pricing documentation

The European Commission in November adopted a proposal for a Code of Conduct[6] that would standardise the documentation that multinationals must provide to tax authorities on their pricing of cross-border intra-group transactions ("transfer pricing" documentation). The proposal that has been developed on the basis of work in the EU Joint Transfer Pricing Forum would reduce significantly the tax complications that companies face when trading with associated enterprises in other Member States. Companies frequently complain at present about the onerous and divergent documentation obligations with which they have to comply in such cases in the different Member States involved. The Code would be a political commitment and would not affect the Member States' rights and obligations or the respective spheres of competence of the Member States and the Community.

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[4] http://ue.eu.int/cms3_fo/showPage.asp?id=916&lang=en&mode=g

[5] http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/228&format=HTML&aged=0&language=en&guiLanguage=en

[6] http://europa.eu.int/comm/taxation_customs/resources/documents/COM(2005)543_en.pdf

2.4. Communication on Home State taxation for SMEs

The European Commission in December adopted a Communication[7] that presents a possible solution to the compliance costs and other company tax difficulties that Small and Medium Enterprises (SMEs) face when doing business across borders. The Commission suggests that Member States allow SMEs to compute their company tax profits according to the tax rules of the home state of the parent company or head office. An SME wishing to establish a subsidiary or branch in another Member State would as a result be able to use tax rules and file tax returns in a country with which it is familiar. The "Home State Taxation" system would be voluntary for both Member States and companies and would run for a five-year pilot phase. The Commission's 2004 European Tax Survey showed that cross-border activity leads to higher company tax and VAT compliance costs for companies and that costs are proportionately higher for SMEs than for large companies.

3. VALUE ADDED TAX (VAT)

3.1 Minimum standard VAT rate

The Council in December adopted a directive[8] on the basis of a Commission proposal of earlier in the year extending until the end 2010 the minimum standard rate of value added tax at 15% (14308/05 and 15225/05 ADD1). The directive maintains the minimum standard rate of VAT applicable in EU member states currently in force, that was normally due to expire on 31 December 2005, for a further period long enough to cover the ongoing strategy to simplify and modernise current EU legislation on VAT. The current minimum level of VAT is set at 15% by directive 77/388/EEC. The standard rate of VAT is fixed by each member state as a percentage of the taxable amount and is the same for the supply of all goods and services.

3.2. Taxation of Gold

The list of gold coins fulfilling the criteria for being VAT exempt throughout the year 2006 was published in the Official Journal[9].

3.3. Place of supply of services to private consumers

The European Commission in July presented a proposal to change the Value Added Tax (VAT) rules that apply when certain services are supplied to private consumers. The changes are intended to eliminate distortions of competition between EU businesses, and between EU and non-EU businesses, that supply services at a distance to private consumers. They should also ease the VAT burden for businesses by streamlining the current rules as between services provided to traders and those provided to private

[7] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0702en01.pdf

[8] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_345/l_34520051228en00190020.pdf

[9] http://europa.eu.int/eur-lex/lex/JOHtml.do?uri=OJ:C:2005:300:SOM:en:HTML

consumers. The changes would build on the amendments that the Commission proposed in December 2003 to the rules governing the supply of services where the customer is a trader[10].

3.4. Proposal to simplify the procedure for charging VAT and to assist in countering tax evasion and avoidance, and repealing certain Decisions granting derogations

On 16 March 2005 the European Commission presented a proposal for a Council Directive[11] that would give all Member States the option of applying special rules to simplify the application of Value Added Tax (VAT) or to counter tax avoidance and evasion. At present Member States are able to apply such special rules but only by individually requesting authorisations from the Council which have to be periodically renewed. As some of those special rules have proved successful, particularly in the fight against tax avoidance and evasion, the Commission wishes to allow all Member States to apply them without having to seek individual authorisations. A wider use of effective measures against tax avoidance and evasion would protect compliant businesses from the competitive advantages gained by tax avoiders and evaders. A single agreed alternative rule should also mean greater transparency and consistency of Member States' rules.

3.5. Table of derogations

On the basis of Article 27 of the Sixth VAT Directive, Member States may be authorised to derogate from the common VAT rules to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Such derogations have been authorised under the following different procedures:

- Council Decisions authorised by the Council under the procedure provided for in Article 27(2) and Article 27(3);
- Council Decisions tacitly approved under the former Article 27(4);
- Special measures that were applied by the Member States before 1st January 1977 and that were notified to the Commission before 1st January 1978, under Article 27 (5).

The Commission is aware, for reasons of transparency and legal certainty, of the importance of making business in particular and European citizens in general, aware of the VAT derogations currently applied throughout the EU. The list reflecting the present state of play concerning the derogations applicable is available on the Europa website[12].

4. EXCISE DUTIES AND OTHER INDIRECT TAXES

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[10] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0334en01.pdf

[11] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0089en01.pdf

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

4.1. Financing of development

The Commission in June transmitted to the Council of Ministers a Staff Working Paper 'An analysis of a possible contribution based on airline tickets as a new source of financing development'[13]. Furthermore, a staff working paper published in September[14] contains an analysis of how a solidarity contribution on airline tickets might be used by EU Member States as a source of development aid in order to help achieving the Millennium Development Goals (MDGs). The paper must be seen in the context of the decisions to double development aid and to deliver better and faster, taken at the June European Council. Requested by the Council of Economic and Finance Ministers in July, the staff working paper contains a technical analysis of the two options which Finance Ministers wish to consider further: mandatory or voluntary payment of a contribution by passengers under a common EU scheme in which Member States could voluntarily participate. A coordinated EU approach would deliver a political message of European solidarity towards developing countries, facilitate and clarify the operation of the measure for airline operators and passengers and ensure that EC Treaty rules were respected.

4.2 Passenger car taxation

The Commission in July presented a proposal for a Directive that would require Member States to re-structure their passenger car taxation systems. The proposal aims to improve the functioning of the Internal Market by removing existing tax obstacles to the transfer of passenger cars from one Member State to another. It would also promote sustainability by restructuring the tax base of both registration taxes and annual circulation taxes so as to include elements directly related to carbon dioxide emissions of passenger cars. The proposal aims only to establish an EU structure for passenger car taxes. It would not harmonise tax rates or oblige Member States to introduce new taxes.[15]

5. TAX ADMINISTRATION, TAX AVOIDANCE AND EVASION MEASURES

5.1. Fiscalis and Customs 2013

The European Commission in April adopted the last package of detailed proposals, linked to the next Financial Framework 2007-2013[16]. The proposals flesh out the Union's priorities on a range of vital areas such as research - to strengthen the Union's competitiveness - citizenship, freedom, security and justice and health and consumer protection - to make the European Union a safer place to live in - and a reform to achieve sustainable fisheries. Inter alia, the Commission proposes to renew until 2013 the existing Customs and Fiscalis Programmes 2007. These are improving co-operation between customs and tax administrations against fraud and are establishing trans-European computerised networks for customs and taxation control purposes. The programmes must

[13] http://europa.eu.int/comm/taxation_customs/resources/documents/tax_airline_tickets.pdf

[14] http://europa.eu.int/comm/taxation_customs/resources/documents/sec_2005_1067.pdf

[15] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0261en01.pdf

[16] http://europa.eu.int/comm/taxation_customs/resources/documents/COM(2005)111_en.pdf

continue in order to safeguard the EU's and Member States' revenues, protect the EU's external borders and ensure the safety and security of citizens and the competitiveness of European trade. The proposed budget for the programmes, spread over the six years, is €522 million. See also Communication on the Customs 2013 and Fiscalis 2013 Community programmes[17].

5.2. Mid-term evaluation of Fiscalis 2007 Programme

The Commission in July published a mid-term evaluation covering the results and impacts of actions financed and organised by the Fiscalis 2007 Programme during its first two years. The evaluation also addresses the impacts of actions financed at national level where they constitute a logical extension of the Fiscalis 2007 Programme. It examines to what extent the objectives of the Programme were achieved (effectiveness) at a reasonable cost (efficiency). It also examines whether the objectives of the Programme correspond to the needs of the administrations concerned (relevance)[18].

6. Public consultations[19]

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 millennium. 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. We hope that businesses, consumers and citizens will use these tools wherever possible, to help us to respond faster and more accurately to their needs.

VAT: public consultation on rules that apply when services are supplied to private consumers[20].

7. 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.

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[17] http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0111en01.pdf

[18] http://europa.eu.int/comm/taxation_customs/resources/documents/taxation/tax_cooperation/fiscalis_programme/legal_texts_docs/midterm_eval_%20FISC2007_en.pdf

[19] http://europa.eu.int/comm/taxation_customs/common/consultations/tax/index_en.htm

[20] http://europa.eu.int/comm/taxation_customs/common/consultations/tax/index_en.htm

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

8. 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 Second Annual Report on monitoring the application of Community law (2004) was published in 2005[21].

See also the press releases on infringements included in the "What's New" page of the website of the Directorate General for Taxation and the Customs Union.[22]

9. EUROPEAN COURT OF JUSTICE JUDGEMENTS

For judgements of the European Court in 2005 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 the Customs Union at
http://europa.eu.int/comm/taxation_customs/common/legislation/case_law/index_en.htm

10. 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

[21] http://europa.eu.int/comm/secretariat_general/sgb/droit_com/infractions

[22] http://europa.eu.int/comm/taxation_customs/index_en.htm

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.

The Opinions delivered in 2005 on tax issues by the Parliament's Committee for Economic and Monetary Affairs and by the Committee for Legal Affairs and the Internal Market, and parliamentary questions and answers on tax subjects, are to be found on the Parliament's website[23].

11. 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/index_en.asp

12. 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/

13. Tax Publications of the european Commission in 2005

13.1 Speeches

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

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

13.2.1 Taxation papers series

The Directorate General for Taxation and the Customs Union launched the "Taxation papers" series[24] in 2004 with the objective of contributing to the debate on taxation in the European Union. It will form 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.

Papers in 2005:

[23] http://www.europarl.eu.int/news/public/default_en.htm

[24] http://europa.eu.int/comm/taxation_customs/taxation/gen_info/economic_analysis/tax_papers/index_en.htm

- Group taxation in the EU, Insights from US and Canada
- Effective levels of company taxation in the new Member States
- Corporate income tax evidence from Belgium
- Implicit Tax Rate for Non-Financial Corporations
- Macroeconomic Tax Rate on Labour
- European Tax Survey

13.2.2 Other publications

- The Structures of the Taxation systems in the EU published in October 2005 by the Commission's Taxation and Customs Union Directorate-General and Eurostat, the EU's statistical office[25]. This year's issue is particularly important in that it for the first time extends to the 10 new Member States the calculation of implicit tax rates (ITRs) on labour, consumption, energy and capital. Although data limitations have resulted in incomplete coverage for some of the new Member States, this is a particularly important development as accession has heightened demand for reliable information on the New Member States' tax systems and has highlighted the significant differences in the level and structure of taxation between the old and new Member States.

- Tax treatment of research and development expenditure in EU Member States, Japan and the US – study carried out by the International Bureau of Fiscal Documentation on behalf of the European Commission[26]

- Impacts of energy taxation in the enlarged European Union[27]. The objective of this study is twofold: first to analyze how the implementation of the EU energy tax policies will affect the EU and its Member States and secondly to analyze how energy tax policies can contribute to climate policy objectives in the enlarged EU.

- VAT rates in Member States[28]

- Excise duty rates in Member States[29]

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[25] http://europa.eu.int/comm/taxation_customs/taxation/gen_info/economic_analysis/tax_structures/index_en.htm

[26] http://europa.eu.int/comm/taxation_customs/resources/documents/eu_rd_final_rep_dec_2004.pdf

[27] http://europa.eu.int/comm/taxation_customs/taxation/gen_info/economic_analysis/economic_studies/index_en.htm

[28] http://europa.eu.int/comm/taxation_customs/resources/documents/taxation/vat/how_vat_works/rates/vat_rates_2005_en.pdf

[29] http://europa.eu.int/comm/taxation_customs/taxation/excise_duties/alcoholic_beverages/rates/index_en.htm
http://europa.eu.int/comm/taxation_customs/taxation/excise_duties/energy_products/rates/index_en.htm

14. CONFERENCES AND SEMINARS ON TAX ISSUES ORGANISED BY THE EUROPEAN COMMISSION

- Fiscalis Seminars (Co-operation between tax administrations under the Fiscalis programmes). These 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. For further information see: http://europa.eu.int/comm/taxation_customs/taxation/tax_cooperation/fiscalis_programme/index_en.htm

- The European Commission supported an international conference "Value added tax system in a global environment" organised in Rome in March[30].

- The Commission's Taxation and the Customs Union DG on 31 May organised together with the "Bundessteuerberaterkammer" (the German Federal Chamber of Tax Consultants) a Round Table Conference on "Simplifying Value Added Tax obligations - towards a one-stop scheme"[31].

- In November 2005, the European Anti-Fraud Office (OLAF) hosted an EU Conference of Fraud Prosecutors in Brussels. VAT-fraud and fraud affecting the area of trade, both agriculture and commercial, were the main focus of a conference for public prosecutors from all over Europe. During the two-day conference, OLAF judicial experts discussed the practical implications of their investigation and operations in these areas with over 70 anti-fraud prosecutors from 27 countries and from Eurojust[32].

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http://europa.eu.int/comm/taxation_customs/taxation/excise_duties/tobacco_products/rates/index_en.htm

30 http://www.itdweb.org/VATConference/pages/newsupdates.aspx

31 http://praesenzen.datevstadt.de/13037/display/showpage.jsp?PageID=250859

32 http://europa.eu.int/rapid/pressReleasesAction.do?reference=OLAF/05/17&format=HTML&aged=0&language=en&guiLanguage=en