



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION

Brussels, 27 January 2003
Doc (2003) 2101

ACTIVITIES OF THE EUROPEAN UNION (EU) IN 2002 IN THE TAX FIELD

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ACTIVITIES OF THE EUROPEAN UNION (EU) IN 2002 IN THE TAX FIELD¹

Note: More general Commission proposals and initiatives which contain a tax dimension are included in the Annex to this Report.

I. PERSONAL AND CORPORATE TAXATION

1.1. “Tax Package”

The package of measures to tackle harmful competition in the European Union, the principles of which were agreed by the Council of the EU (composed of Economic and Finance Ministers of Member States – known as “ECOFIN”) in December 1997², comprises:

- The Commission's proposal of 18 July 2001³ (replacing a May 1998 proposal) to ensure effective taxation of cross-border interest on savings paid to individuals within the European Community;

¹

- Commission proposals for legislation and Commission Communications and reports are published as "COM" documents. Tax proposals and reports can be located by searching in the website of the Directorate General for Taxation and the Customs Union of the European Commission at http://europa.eu.int/comm/taxation_customs/taxation/taxation.htm and all proposals and reports can also be found in the EU database “EUR-Lex” at http://europa.eu.int/eur-lex/en/search/search_lip.html
- For information on how to order paper copies of publications see <http://eur-op.eu.int/general/en/subsid.htm> or contact the office of the delegation of the European Commission in the country concerned.
- EU Council of Ministers meetings and Council documents are included in the newsroom page of the website of the Council of the European Union at <http://ue.eu.int/newsroom/main.cfm?LANG=1>
- The Bulletin of the EU provides summary reports of the activities of the Commission and the other Community institutions. It is produced by the Secretariat-General of the European Commission and is published 10 times a year in the official European languages. See <http://europa.eu.int/abc/doc/off/bull/en/welcome.htm>.
- The Official Journal of the European Communities (OJ) is published every working day in all eleven official languages of the EU. It consists of the L series for legislation and C series for information and notices and a supplement, the S series, for public tenders. It is available free of charge on line since 1998. See <http://europa.eu.int/eur-lex/en/index.html>
- RAPID is a database giving a daily view of the activities of the European Union as presented by the Institutions in their press releases – see <http://europa.eu.int/rapid/start/welcome.htm>. Press releases are published as “IP” documents followed by the year and the document reference.

² Official Journal C 2 p. 1 of 6. 1. 98

³ (COM (2001) 400 final)

- The Code of Conduct for business taxation⁴ (whereby Member States will refrain from introducing any new harmful business tax measures and will amend any laws or practices that are deemed to be harmful in respect of the principles of the Code) and
- The Commission's March 1998 proposal for a Directive to eliminate withholding taxes on payments of interest and royalties made between associated companies of different Member States⁵
- An undertaking by the Commission to publish guidelines on the application of the State aid rules to measures relating to direct business taxation by mid-1998⁶ (see part 7 below).

The Feira European Council in June 2000 set a deadline of the end of 2002 for agreement to be reached on the tax package. The Feira European Council also requested that, in parallel with the discussions within the Community on the savings proposal, talks be initiated with key non-EU countries (United States, Switzerland, Liechtenstein, Monaco, Andorra, San Marino) to ensure the adoption of equivalent measures in those countries in order to allow effective taxation of savings income paid to EU residents. At the same time, the Member States with dependent and associated territories agreed in Feira that they would engage in talks with those territories to promote the adoption there of the same measures adopted in the Community concerning savings taxation and to ensure the rollback of harmful business taxation measures. The Member States in question are the United Kingdom and the Netherlands and the relevant dependent and associated territories are the Channel Islands, the Isle of Man and the dependent and associated territories in the Caribbean.

Work continued intensively on all elements of the package in 2002. The Barcelona and Seville European Councils in March and June reiterated their support for the completion of this work.

As regards savings taxation, the ECOFIN on 5 March 2002 agreed without discussion on the standard format that Member States would use to exchange information with each other, in accordance with the proposed taxation of savings income Directive, on interest payments made to individual savers. Under the proposed Directive, communication of the information in this standard format would be automatic and would take place at least once a year. In order to simplify the process of information exchange, Member States had agreed that the same format should be used by each tax administration and a Council working group was involved in resolving the points of detail. The format reflects the information requirements contained in the proposed Directive, as regards the identity and residence of a beneficial owner and details of the payments made to him.

The Commission made regular oral reports to the ECOFIN on the progress of the negotiations on savings taxation with non-EU countries, and presented a written report⁷ to the Council on 3 December 2002.

As regards the Code of Conduct, the ECOFIN at its meeting on 4 June took note of a progress report of the work of the Code of Conduct Group which was set up in March 1998⁸ to exchange information on tax measures likely to come under the code and to evaluate them.

⁴ Official Journal C 2, p. 2 of 6. 1. 98

⁵ COM(1998) 67 final

⁶ Commission notice on the application of State aid rules to measures relating to direct business taxation. Official Journal C 384, pages 3-9 of 10 December 1998

⁷ SEC (2002)1287

⁸ Official Journal C 99, p 1, of 1/4/98

Ministers asked the Code of Conduct Group to continue the work on rollback of harmful measures and to complete its work programme on transparency and exchange of information in the area of transfer pricing and report back by the end of the year. The Group presented a report on the state of play to the Council of Ministers at the end of the year.

At the ECOFIN of 11 December 2002, the Council President concluded that although agreement could not be reached at this Council on the tax package, there had been a good deal of progress and that he expected an agreement to be reached at the next ECOFIN on 21st January 2003.

The ECOFIN on 21 January 2003 reached political agreement on the tax package and committed itself to formally adopting it before the European Council in March 2003. Under this agreement, in the case of savings taxation, twelve Member States are due to implement automatic exchange of information concerning interest income derived from savings in another Member State from 1 January 2004, whereas Austria, Belgium and Luxembourg will apply a withholding tax on savings held by residents of other Member States (15% from 1.1.04, 20% from 1.1.07 and 35% from 1.1.10) and share the revenue with the country of residence (handing over 75% and keeping 25%). Switzerland has agreed in principle to apply the same arrangements as Austria, Belgium and Luxembourg. The Council agreed that the European Community should enter into similar agreements with Liechtenstein, Monaco, Andorra and San Marino. The Council assessed that sufficient reassurances have been obtained with regard to the application of the same measures applying the same procedures as the 12 Member States or as Austria, Belgium and Luxembourg, in all relevant dependent or associated territories (the Channel Islands, Isle of Man, and the dependent or associated territories in the Caribbean) and asked the Member States concerned (UK, Netherlands) to ensure that all relevant dependent or associated territories will apply those measures from the date of implementation of the Directive. For further details see [MEMO/03/13](#) on the press release website⁹ of the European Commission.

1.2 EU company tax orientation debate

The ECOFIN on 12 July 2002 consider the Commission's Company Tax Communication of 23 October 2001¹⁰, following a presentation by Taxation Commissioner Frits Bolkestein. The Commission had proposed both short term and long term solutions to eliminate the tax obstacles to cross-border economic activity in the Internal Market. The Council debated both the short term Commission solutions, which consist of plans for specific proposals on such issues as the extension of the Directives on dividends and mergers, cross border loss relief, transfer pricing, and double taxation conventions, and the longer-term solution consisting in a single consolidated corporate tax base for EU companies in order to avoid the current costly inefficiencies of fifteen separate sets of tax rules. The Council broadly welcomed the targeted solutions for the short and mid-term and invited the Commission to pursue its work with a view to implementing the related measures identified in the Communication as soon as feasible. As far as the long term solution is concerned, the Council considered that further efforts by the Commission were needed to create a better basis for discussion with regard to the proposed single consolidated corporate tax.

1.3. Joint Transfer Pricing Forum

On 19 July, the European Commission announced that it had appointed ten private sector tax experts to participate in the EU Joint Transfer Pricing Forum on business taxation¹¹, as well as

⁹ <http://europa.eu.int/rapid/start/cgi/guesten.ksh>

¹⁰ COM (2001) 582

¹¹ For more info. see http://europa.eu.int/comm/taxation_customs/taxation/company_tax/transfer_pricing.htm

a Chairman of the Forum. Together with experts from Member States' administrations, the business experts have the task of considering ways of reducing the high compliance costs and eliminating the double taxation that often arise in the case of cross-border inter-group transactions. These problems occur because of disagreements both between companies and tax administrations and between national tax administrations on the pricing of the transactions. The Commission made these appointments with the agreement of representatives of the Presidency of the EU's Council of Ministers and of the European employers' organisation UNICE. A first meeting of the Forum, which the Commission announced in its Communication on company taxation outlining a strategy for company taxation in the EU of 23rd October 2001¹², took place on 3 October 2002 and it will meet two or three times a year.

1.4 Report on pensions taxation

The Council of Ministers on 3 December 2002 took note of a report by the Presidency¹³ of the Council on the state of play of the discussions in the Council on the tax issues arising from the cross-border payment of occupational pensions. Ministers had asked to receive such a report by the end of 2002 on the follow-up to the Commission Communication of 19 April 2001 on the elimination of tax obstacles to the cross-border provision of occupational pensions. Some constructive technical discussions have taken place in 2002 between Member States in the field of improving exchange of information and of eliminating cases of double taxation and double non-taxation which result from the differences between Member States' systems for the taxation of occupational pensions.

2. VALUE ADDED TAX (VAT)

2.1 Proposal to simplify rules for travel agents selling holiday packages

The European Commission on 18 February 2002 presented a proposal¹⁴ to modify the special VAT rules applicable to travel operators selling holiday packages to travellers. Under the present special rules, travel agents are normally obliged to charge VAT on their profit margin instead of on the full value of their sales. The proposal would amend these rules to eliminate double taxation problems which currently arise when travel agents make sales to other agents rather than to the traveller. The proposal would also remove unfair competitive advantages for some travel operators caused by exemptions for the supply of travel services that are still applicable in certain Member States and by the non-taxation of non-EU-established operators selling holiday packages to EU residents. The proposal would also modernise and simplify the special rules.

2.2 Adoption of rules for application of VAT to electronically delivered services

The ECOFIN on 7 May 2002 adopted a Directive¹⁵ and a Regulation¹⁶ to modify the rules for applying VAT to certain services supplied by electronic means as well as subscription-based and pay-per-view radio and television broadcasting. The new rules, based on Commission proposals of 7 June 2000, will create a level playing field for the taxation of digital e-commerce in accordance with the principles on the taxation of e-commerce agreed at a 1998

¹² COM(2001)582 final

¹³ Doc. 12876/02 of the Council

¹⁴ COM(2002) 64 final

¹⁵ Council Directive 2002/38/EC

¹⁶ Council Regulation No 792/2002

OECD Ministerial Conference held in Ottawa. The rules will ensure that when these services are supplied for consumption within the European Union, they will be subject to EU VAT, and that when they are supplied for consumption outside the EU, they will be exempt from VAT. The changes modernise the existing VAT rules to accommodate the emerging electronic business environment and to provide a clear and certain regulatory environment for all suppliers, located within or outside the EU. The rules also contain a number of facilitation and simplification measures aimed at easing the compliance burden for business. Member States must implement the new measures by 1 July 2003.

2.3 Launch of new on-line service to validate VAT identification numbers¹⁷

The Commission on 14 June 2002 launched an online service to enable businesses across Europe to check the validity of their customers' VAT identification numbers on the Internet. The online service gives businesses access to certain parts of the system of electronic information exchange used between tax authorities, known as the "VAT Information Exchange System" or "VIES". The new service will save time and administrative costs both for businesses and tax administrations. Under current VAT rules, supplies of goods made by a trader in one Member State to a trader in another Member State are exempt from VAT in the country of origin, on the basis that they will be taxed in the country of destination. However, a trader making intra-EU supplies must be sure that his customer is subject to VAT in another Member State before despatching the goods free of VAT as otherwise he may have to pay the VAT himself. Until now, a supplier wishing to confirm the validity of the VAT identification number provided by his customer had to contact his own tax administration which would check the VIES and confirm that the number quoted was valid. This is part of the Commission's work to make doing business in the EU's internal market as simple as possible, by removing practical obstacles which are a headache for businesses.

2.4 Reports on cross-border deduction rules¹⁸ and place of supply of services¹⁹

The ECOFIN on 4 November 2002 noted a progress report from the Presidency on the cross-border deduction of VAT and harmonisation of the right to deduct VAT in the case of passenger vehicles as well as a progress report from the Commission on the VAT rules governing the place of supply of services in general. The Council asked its Permanent Representatives Committee and its Working Party on Fiscal Questions to continue the work in order to report to the Council before 1 June 2003 on the proposal for amending 6th VAT Directive²⁰ as regards the rules governing the right to deduct²¹. The Council also invited the Commission to continue its work on the revision of rules on the place of supply of services.

2.5 Adoption of one-year extension for reduced VAT rates on labour-intensive services

The ECOFIN on 3 December 2002 adopted without discussion a Commission proposal²² to allow Member States to apply for an additional year (i.e. until 31 December 2003) a reduced rate of Value Added Tax (VAT) 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 (9 in total - Belgium, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom) to apply a reduction of VAT on these services for an experimental period from 1 January 2000 to 31 December 2002.

¹⁷ For further info. see http://europa.eu.int/comm/taxation_customs/databases/vies_en.htm

¹⁸ Council Document 13347/1/02

¹⁹ COM(2002) 587 final

²⁰ 77/388/EEC

²¹ COM (1998) 377

²² COM 2002 0525

The aim was to test the impact of such a reduction in terms of job creation and of combating the black economy. The Commission proposed the extension so as to allow the present arrangements to continue until the Commission makes an overall assessment and proposals regarding all reduced VAT rates, including the treatment of labour-intensive services, in 2003.

2.6 Proposal to adapt VAT rules for gas and electricity supplies

On 5 December 2002, the European Commission presented a proposal²³ to amend the rules on the place of taxation of natural gas and electricity for the purposes of VAT so as to facilitate the functioning of the Single Market for energy. The proposal would eliminate current problems of double taxation and non-taxation and distortions of competition between traders by changing the place of taxation of natural gas in pipelines and of electricity from the place of supply to the place of consumption. Under the proposed rules, where the buyer was a trader reselling the supplies, the place of taxation would be the place where the buyer was established. Where the sale was to a final consumer, the place of taxation would be the place of consumption. For transmission services closely linked to the supply of gas and electricity, the proposal contains a corresponding clause providing that taxation would take place in the country where the customer was established. The current rules have worked adequately in a national context but are not appropriate now with market liberalisation and increasing cross-border supplies of gas and electricity. It is difficult to determine where the place of supply of gas and electricity is located and this leads to differences of interpretation of the rules by Member States and difficulties for traders supplying gas and electricity across borders.

2.7 Council decisions concerning individual Member States

2.7.1 Germany – Liquidations of businesses

The Council on 4 June adopted a decision²⁴ authorising Germany to apply a measure derogating from normal VAT rules in the case of liquidations of businesses. Under this decision, Germany is authorised to designate the recipient of the supplies of goods as the person liable to pay value added tax, whereas normally under VAT rules it is the taxable person supplying the taxable goods or services who is liable to pay VAT. Germany requested the derogation in order to simplify the collection of VAT where goods are supplied in the course of liquidation of the enterprise that owned the property sold. At present, the person normally liable for the tax is generally prevented by financial difficulties from paying the VAT invoiced and the recipient of the goods can deduct the value added tax invoiced to him, even though it has not been paid by the taxable person who supplied the goods. The authorisation has been granted until 31 December 2006, when it will be reviewed in the light of experience.

2.7.2 Adoption of special measures for Greece concerning taxation of recyclable waste

The Council on 12 July 2002 adopted a Decision²⁵ authorising Greece to apply special measures derogating from Articles 2 and 28a of the Sixth VAT Directive²⁶. The Decision allows Greece to prevent fraud, in a sector in which collecting VAT is rendered particularly problematic by the difficulty of identifying and supervising activities, by excluding services of recycling waste from the scope of the normal VAT rules on taxation and input deduction. The special measures may be applied until 31 December 2003.

²³ COM/2002/688

²⁴ Council Decision 2002/439/EC

²⁵ Council Decision 2002/736/EC

²⁶ 77/388/EEC

2.7.3 Germany and France VAT derogation for Rhine bridges

The Council on 4 November 2002 adopted a provision²⁷ authorising Germany and France to depart from normal VAT rules in respect of the construction and maintenance of cross-border bridges located on the Rhine. In the absence of a specific measure, the place of taxation for construction and maintenance work on the cross-border bridges would be dictated by the geographical territorial boundary between the two Member States. The geographical territorial boundary on each bridge is determined by the depth of the river, is not therefore a straight line and changes constantly over time. This makes it difficult to apply VAT legislation. Therefore this provision deems that, for the construction and maintenance of certain cross-border bridges on the Rhine, including winter maintenance services and regular cleaning, the territorial boundary between Germany and France lies in the middle of each bridge.

2.7.4 Austria - VAT derogation concerning the construction sector

The Council on 4 November 2002 adopted a decision²⁸ to allow Austria to depart from normal VAT rules so as to deal with tax evasion in the construction sector. The derogation has the effect of treating as the person liable for VAT the person to whom the services are provided (i.e. the contractor) rather than the person who provides the services (i.e. the sub-contractor). The derogation is limited to 31 December 2007 so that at that stage an assessment can be made of whether it is justified.

3. EXCISE DUTIES AND OTHER TAXES

3.1 Council adoption of new rules on tobacco taxation

The Council on 11 February 2002 adopted a Directive²⁹ revising the rates and structure of excise duties on manufactured tobacco. The Directive, based on Commission proposals of 15 March 2001³⁰, introduced a minimum fixed amount of excise duty per 1000 cigarettes in the most popular price category to narrow differences between tax levels in different Member States. The changes were also designed to ensure that the level of excise duty on tobacco products such as fine-cut tobacco are more closely aligned with the level of duty on cigarettes to reflect increasing health concerns. The measure also provides for increases in the minimum amounts of tax on cigars, cigarillos and smoking tobacco to adjust for inflation. The new Directive entered into force on 1 July 2002.

3.2 Taxation of Biofuels

The Council on 20 June gave its political agreement to the text of a Directive based on that proposed by the Commission in November 2001³¹. The proposal will make it possible for Member States to exempt or apply a reduced rate of excise duty to biofuels and to certain mineral oils containing biofuels. The proposal will not enter into force until the Council has also reached agreement on the proposal made by the Commission on the same date for a directive promoting the use of biofuels in transport³².

3.3 Commission proposes harmonisation of taxation on commercial diesel fuel

²⁷ Council Decision 2002/888/EC

²⁸ Council Decision 2002/880/EC

²⁹ Council Directive 2002/10/EC

³⁰ COM(2001) 133/2 final

³¹ COM(2001) 547

³² Also COM(2001) 547

On 24 July 2002, the European Commission presented a proposal³³ to harmonise gradually Member States' excise duty on commercial diesel fuel and to align minimum excise rates on non-commercial diesel and unleaded petrol. The purpose is to achieve better environmental protection and to eliminate huge problems of distortion of competition in the EU's liberalised road transport markets. For commercial diesel, the proposal would establish a target ("central") rate of €350 per 1000 litres from 1 January 2003, to be adjusted for inflation from 2003 onwards, allowing Member States a gradually narrowing scope for variation either side of the central rate so as to arrive at a single harmonised rate by 2010. As for non-commercial diesel, the proposal would apply the same minimum level of excise duty as unleaded petrol by 2006 since there are no environmental or other reasons to justify the present lower minimum rate on diesel. Moreover, the proposal would increase the present minimum rate of duty on unleaded petrol from €287 to €360 to take account of inflation. Once the lowest rate of duty on commercial diesel exceeds €360 under the gradual move towards harmonisation of the rate, that minimum rate must also become the minimum rate for non-commercial diesel fuel and unleaded petrol. Thus the minimum duty rate on non-commercial diesel and unleaded petrol will never be lower than that on commercial diesel and will be constantly adjusted in line with inflation. The common approach to the taxation of excise duties on diesel used by road hauliers and coach operators is one of the objectives laid out in the Commission's White Paper on European Transport Policy for 2010³⁴.

3.4 Energy tax

Work continued intensively during 2002 in the Council on a proposal for an EU Directive on energy taxation. The European Council in Barcelona in March 2002 set a deadline of the end of 2002 for an agreement on the Directive and the Seville European Council in June reaffirmed this deadline. The discussions are based on the Commission's 1997 proposal for a Community framework, including minimum tax levels, for the taxation of all competing sources of energy³⁵. The Spanish Presidency in the first half of 2002 drew up guidelines providing a clear direction for further work on the basis of the Commission's proposal. At their meeting on 20 June, the ECOFIN took note of a progress report to the Seville European Council by the Chairman of the ad hoc High Level Working Party on energy taxation established following the Council of Ministers of 8th May. Under the Danish Presidency in the second half of 2002 discussions continued and a large measure of agreement was reached. The outstanding points are

- the arrangements for the taxation of diesel fuel, in particular the question of a common definition of commercial use and transitional arrangements for those countries which currently apply a reduced rate of excise duty to diesel used by road hauliers or lower rates in general
- the possibility of applying tax reductions or exemptions for agriculture or horticulture
- the application of tax reductions where agreements have been reached with businesses which lead to achievement of environmental protection objectives or improvements in energy efficiency

No agreement was reached at the final ECOFIN at the end of 2002 but the Presidency indicated that it expected agreement in early 2003.

3.5 Car taxation: Commission presents new strategy

³³ COM (2002) 410 final

³⁴ COM (2001) 370

³⁵ COM/97/0030

The European Commission on 9 September 2002 presented a comprehensive strategy³⁶ on the taxation of passenger cars in the European Union. First, the Commission analyses current passenger car taxation systems and explores ways of improving their co-ordination so as to remove the present considerable tax obstacles and distortions to free movement of passenger cars within the Internal Market. Registration taxes are identified as the biggest problem and therefore the Commission recommends their gradual reduction and even abolition, to be replaced by annual road taxes and fuel taxes (so that the tax burden would remain the same but related to the use of a car rather than its acquisition). The Commission also recommends a certain degree of approximation of annual road taxes to prevent car market fragmentation. Second, the Commission examines ways of restructuring existing vehicle taxes so as to put more emphasis on environmental objectives in line with Community policy and the Kyoto Protocol. In particular, it recommends that the taxation of new passenger cars be more directly related to their CO₂ emissions. The Commission urges Member States to take these recommendations into account when evaluating and revising their national vehicle taxation systems. Moreover, the Commission may present proposals for Community legislation on the basis of these principles and in the light of the results of consultations with interested parties based on this strategy Communication.

3.6 Computerisation of the movement and control of goods subject to excise duties

Discussions continued on the Commission's 2001 proposal³⁷ for a European Parliament and Council Decision for the Member States to commit themselves to computerise the documents that accompany products subject to excise duty (alcohol, tobacco and mineral oil products) moving between traders inside the Community system, when the excise duties have not yet been paid. The proposal requires co-decision by the European Parliament and the Council. The European Parliament adopted the proposal for a decision at first reading, with ten amendments. Discussions at the Council revealed the need for a number of other stylistic changes and clarifications. The Commission on 20 December therefore made an amended proposal to include these changes³⁸. The Council adopted the amended proposal on 21 January and it will now return to the Parliament for a second reading. It is due to enter into force on 1 June 2003.

3.7 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.

3.7.1 Authorisation to Netherlands concerning excise duty to low-sulphur petrol

The Council on 25 March authorised the Netherlands³⁹ to apply a differentiated rate of excise duty to low-sulphur (50 ppm) petrol from 1 October 2002 to 31 December 2004. The Netherlands sought the derogation on environmental grounds - in particular the benefits of low-sulphur petrol in terms of air quality are known.

3.7.2 Authorisation to Denmark concerning excise duty to heavy fuel oil/heating oil

³⁶ COM (2002) 431 plus annex SEC(2002) 858

³⁷ COM(2002) 757

³⁸ COM(2001) 466

³⁹ Council Decision 2002/263/EC

The Council on 25 March authorised Denmark⁴⁰ to apply a differentiated rate of excise duty to heavy fuel oil and heating oil used by energy-intensive firms to produce heating and hot water. The aim of the differentiated rate of duty is partly to compensate for the fact that the actual tax is much higher than was intended when the national measures were adopted increasing the CO₂ and energy taxes on the use of heavy fuel oil and heating oil to produce heating and hot water. The requested exemption is in keeping with environmental policy. In particular, the reduced rate is granted only to firms which agree to improve their energy efficiency. The Decision will expire on 31 January 2008.

3.7.3 Authorisations to France and Italy to apply a differentiated excise duty to biofuels

On 25 March, the Council authorised France⁴¹ to apply a differentiated rate of excise duty to vegetable oil esters incorporated into domestic heating fuel and diesel, and to ethyl alcohol derivatives (where the alcohol component is of agricultural origin) incorporated into premium grade or regular petrol. The French authorities must issue the necessary permits to the biofuel production units concerned by 31 December 2003 at the latest and the authorisations will be valid for a maximum of six years from the date of issue. The Council also authorised Italy⁴² to apply differentiated rates of excise duty on mixtures used as motor fuels containing 5 % or 25 % of biodiesel until 30 June 2004. The measures requested by the French and Italian authorities are in line with the Community's policy of developing the biofuel sector, in the interests of protecting the environment and ensuring security of energy supply.

3.7.4 Authorisation to Luxembourg concerning excise duty to low-sulphur diesel

The Council on 7 May authorised Luxembourg⁴³ to apply a EUR 15 per 1000 litre increase in excise duty on diesel fuel with a sulphur content exceeding 50 ppm. The effective rates will remain above the minimum Community rates of excise duty. Luxembourg sought the derogation on environmental grounds - the benefits in terms of air quality of low-sulphur diesel are known. The measure will expire on 31 December 2003.

3.7.5 Authorisation to UK concerning excise duty on fuels containing biodiesel

On 27 June the Council authorised the United Kingdom⁴⁴ to apply a differentiated rate of excise duty to biodiesel used as road fuel either as pure fuel or blended into diesel fuels up to 5 per cent volume. The United Kingdom's request is in line with the Community's policy of developing the biofuel sector, in the interests of protecting the environment and ensuring security of energy supply. The Decision will expire on 31 March 2007.

3.7.6 Authorisation to Sweden concerning alkylate-based petrol

The Council of Ministers adopted a Decision on 8 October⁴⁵ authorising Sweden to apply a differentiated rate of energy tax to alkylate-based petrol for two-stroke engines. This Decision will expire on 30 June 2008.

4. TAX MEASURES TAKING ACCOUNT OF THE STRUCTURAL, SOCIAL AND ECONOMIC SITUATION OF THE OUTERMOST REGIONS OF THE EU

Article 299(2) of the EC Treaty permits the Council to adopt specific measures in favour of the outermost regions of the Union (French overseas departments, the Azores,

⁴⁰ Council Decision 2002/264/EC

⁴¹ Council Decision 2002/266/EC

⁴² Council Decision 2002/265/EC

⁴³ Council Decision 2002/375/EC

⁴⁴ Council Decision 2002/550/EC

⁴⁵ Council Decision 2002/828/EC)

Madeira and the Canary Islands) to offset the competitive disadvantages resulting from geographical factors.

4.1 Extension of application of a reduced rate of excise duty on "traditional" rum produced in French overseas departments

The Council on 18 February authorised France⁴⁶ to continue the application of a reduced rate of excise duty in mainland France to "traditional" rum produced in the French Overseas Departments (Guadeloupe, Réunion, Martinique and Guyane). The extensions apply for a period of seven years, from 1 January 2003 until 31 December 2009. The reduced rate may not be less than 50% of the standard national excise duty rate on spirits and is limited to an annual quota of 90000 hl of pure alcohol. By 30 June 2006, France must send the Commission a report to enable it to assess whether the reasons which justified the granting of the reduced rate still exist.

4.2 Authorisation to Portugal to apply reduced rates of excise duty in Madeira and the Azores on certain locally produced and consumed alcohol

The Council on 18 February authorised Portugal⁴⁷ to apply a lower rate of excise duty in its two autonomous regions on locally produced and consumed spirits: rum and liqueurs in Madeira, and liqueurs and eaux-de-vie in the Azores. The decision allows Portugal to reduce the national rate for spirits by up to 75%. The concession applies for seven years, from 1 January 2002 to 31 December 2008, and Portugal is required to submit a report to the Commission no later than 31 December 2005 to enable it to judge whether the grounds for the reduction still apply.

4.3 "AIEM" in the Canary Islands

The Council on 20 June 2002 adopted a decision⁴⁸ on the arrangements concerning the AIEM ("Arbitrio sobre las Importaciones y Entregas de Mercancias en las islas Canarias" tax applicable in Canary Islands. Under this decision, the Spanish authorities are authorised until 31 December 2011 to lay down total exemptions from or partial reductions of the tax on supplies of goods in the Canary Islands effected by local producers of the goods and on imports of comparable or similar goods. The exemption/reduction is in respect of products listed in the Annex of the decision. The Community VAT rules do not apply to the Canary Islands.

4.4 Dock dues in the French overseas departments

The Commission on 23 August adopted a proposal⁴⁹ to extend the period during which partial or total exemptions may be allowed to local production activities from the dock dues payable in the French overseas departments. The period for this relief expired on 31 December 2002 and the Commission proposed that the relief should be extended to 31 December 2003. The Council adopted the proposal on 10 December 2002.

5. TAX AVOIDANCE AND EVASION MEASURES

⁴⁶ Council Decision 2002/166/EC

⁴⁷ Council Decision 2002/167/EC

⁴⁸ Council Decision 2002/546/EC

⁴⁹ COM (2002) 473

5.1 Administrative co-operation in the area of direct taxation

The ECOFIN on 4 June adopted conclusions and a report to the Seville European Council on progress achieved in co-operation between Member States in the area of taxation. It stated that it would ask the Council Working Party to do further work in the direct tax area such as the updating of the direct tax (i.e. income and corporation tax) provisions in the EC Directive on Mutual Assistance (79/77/EEC) and the implementation of the recommendations of the High Level Group on Fraud in its June 2000 report to the Council.

5.2 Administrative co-operation in the field of VAT

The ECOFIN of 5 June 2000 had asked the Commission to submit proposals to reinforce the fight against fraud based on the report of the High Level Group on Fraud mentioned in 5.2 above. The Commission published such a proposal in 2001⁵⁰ and this proposal was discussed and agreed at a technical level by Member States in 2002.

The Commission Standing Committee on Administrative Co-operation with Member States (SCAC) has also been engaged in a number of activities to follow up on other recommendations of the High Level Group on Fraud. In 2002 it undertook work in the field of risk analysis and produced a methodology for risk modelling and risk management process. Comprehensive work is ongoing in the field of following up on carousel fraud and developing best practice to tackle fraud involving missing traders, which is the most serious fraud in the VAT field. SCAC has also made recommendations to introduce a widespread use of computerised procedures in auditing.

SCAC has also, during 2002, finalised the work on a multilateral administrative agreement concerning the exchange of information concerning new means of transport. This agreement was signed by fourteen Member States at the joint Directors General of Customs and Indirect Taxation meeting on 27 November 2002. Such an exchange will take place either on an automatic or spontaneous basis. The objective of the agreement is to help Member States to combat more effectively the high level of fraud in this sector.

5.3 Adoption of "Fiscalis" programme to combat fraud

The European Parliament and the Council on 3 December adopted the Fiscalis 2003-2007 programme⁵¹. This programme, which the Commission had proposed in January 2002, will help Member States work more closely together with a view to preventing tax fraud, through improved electronic information exchange systems between national administrations, joint investigation exercises (multilateral controls), training seminars for tax officials and experts, exchanges of officials between national administrations as well as working groups and project groups. Candidate countries will fully participate in the programme and specific actions will be designed in order to increase the administrative capacity of these countries. Fiscalis 2003-2007 replaces and strengthens the existing Fiscalis programme which expires at the end of 2002. One of the main features of the new programme is that its scope is extended to direct taxation. The cost of the programme will be shared between the European Community (EC) and the participating countries and, with the EC Budget providing €44 million spread over the five years. The budget will be increased on enlargement of the European Union to cover the needs of the new Member States. The programme will run from 1 January 2003 to 31 December 2007.

⁵⁰ COM (2001) 294 – Proposal for a regulation of the European Parliament and of the Council on administrative co-operation in the field of value added tax

⁵¹ Council Decision 2002/2235/EC

5.4 Mutual Assistance in the field of recovery

The European Commission on 9 December 2002 adopted a Commission Directive⁵² laying down detailed rules for implementing certain provisions of Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures. This Commission Directive complements the new rules on recovery adopted by the Council in 2001⁵³ aiming to improve the recovery of claims within the Community.

6. ENLARGEMENT OF THE EU

6.1. Enlargements negotiations

The accession negotiations, which determine the conditions under which each candidate country will join the EU, have been conducted on the basis of the existing Community “acquis” (the body of primary and secondary Community legislation). These negotiations were opened with those candidate countries that had fulfilled all the criteria for membership, applying the principles of own merits. The EU’s general negotiation position is that transitional periods are exceptional, limited in time and scope and accompanied by a plan with clearly defined stages for the application of the acquis. They must not involve amendments to the rules or policies of the EU, disrupt their proper functioning, or lead to significant distortions of competition.

Chapter 10, the taxation chapter, has been opened with all countries except Turkey.

It was finally closed with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia in December 2002. At the December 2002 Copenhagen European Council, Heads of State and Government from the EU and these ten candidate countries reached agreement on a formula for enlarging the EU to encompass these ten new member states as of 1 May 2004.

The taxation chapter has been provisionally closed with Bulgaria. Negotiations with Romania are ongoing.

The EU acquis under this chapter mainly covers indirect taxation, in particular Value Added Tax (VAT) and excise duties, while for direct taxation the acquis is less comprehensive and is mainly based upon cross-border situations within the EU.

On the whole, candidate countries have now established indirect taxation regimes which are close to that of the EU acquis, although a number of specific issues (e.g. exemptions, rate levels, taxable scope, tax refunds, etc.) need to be further aligned. All accession countries have provided the Commission with a timetable for full alignment with the tax acquis which, requires careful monitoring. In their negotiating positions, all candidate countries have made a commitment to accept and comply with the principles of the Code of Conduct for business taxation and, notably, to introduce only new tax measures which are in conformity with these principles.

All candidate countries with which accession negotiations have been opened have requested a number of transitional measures. These are all, with one exception, related to VAT and excise

⁵² Commission Directive 2002/94/EC

⁵³ Council Directive 76/308/EEC

duties. Though most candidate countries do apply a standard VAT rate which is higher than the EU average, the scope of the application of the reduced VAT rate is much broader than what is permitted under the VAT acquis. The excise duty rate levels in candidate countries are significant by being, in most areas, below the level of the Community acquis. Candidate countries' concern for the economic and social implications of having to increase significantly tax rates – and hence prices – on socially sensitive goods by accession resulted in the vast majority of request for transitional measures to delay implementation of the required rate levels for VAT and excise duties.

In considering whether transitional measures could be accepted, the EU took into consideration the need to safeguard the proper functioning of the internal market in the field of taxation, as well as the political, economic and social implications for the candidate countries. As a result, some transitional periods limited in time could be accepted, insofar as distortions of competition and the impact on the functioning of the internal market were considered to be limited, and a social need for candidate countries was clearly demonstrated.

A list of the special arrangements granted to each country is available at:

<http://europa.eu.int/comm/enlargement/negotiations/chapters/chap10/index.htm>

The latest assessment of each candidate country's compliance with the acquis under this chapter heading, can be found in the 2002 Regular Report, available at: <http://europa.eu.int/comm/enlargement/report2002/index.htm>

6.2. Technical assistance

Technical assistance (TA) activities to third countries in the field of taxation have primarily been focussed on supporting the Candidate Countries in their preparations for EU membership. The core strategic objectives in the Taxation pre-accession strategy are to provide support to policy makers responsible for taxation and in creating:

- an overall modernisation strategy for the administrations concerned,
- a legal framework in accordance with the EU's pre-accession strategy,
- services having the operational capacity to apply the Community taxation *acquis*.

Increasingly, the focus has been on administrative capacity.

In 2002, the major part of the activities consisted of ensuring proper tax expertise in the definition and implementation of the TA projects financed via the Phare National Programmes (managed by the Enlargement Directorate General in the European Commission). Twinning, which is an agreement between a Member State and a Candidate Country to implement a specific programme, has remained the most common tool for providing TA. Other forms of TA, such as 'twinning light', with reduced administrative requirements, have also been used, especially for remaining specific needs which have to be addressed swiftly before accession.

A specific issue, to which particular attention has been paid, is the situation concerning IT interconnectivity. In order for the Internal Market to function properly without fiscal frontiers, Candidate Countries must have several IT systems in place before accession which are compatible with the EU systems. The most important system in the field of taxation is the VIES system (Value Added Tax Information Exchange System) whereby information for VAT purposes on intra-Community trade is exchanged via a secured network (CCN/CSI), which ensures the transfer of the data between Member States.

Monitoring (and assistance) missions to assess the situation concerning interconnectivity and IT operational capacity have been carried out in all the candidate countries (except Turkey) during 2002. Progress has been made, but for some countries additional efforts will be needed in order to meet the deadline. Close monitoring of these countries will be continued.

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. 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

State aid decisions in the tax field in 2002 included the following:

- Commission terminates proceedings on the Azores tax scheme (Portugal) by adopting a conditional decision that excludes financial services⁵⁴
- Commission finds that Trieste Financial Centre tax regime is no longer in line with State aid rules⁵⁵
- Commission authorises tax reductions for the free zone of Madeira (Portugal)⁵⁶
- Special tax regime for international treasury pools in France is not in line with State aid rules⁵⁷
- Commission proposes the abolition or reform of the Exempt Company regime in Gibraltar⁵⁸
- State aids: Commission seeks end to some advantages enjoyed by EdF⁵⁹
- Commission rules against two special tax regimes in Luxembourg for co-ordination centres and finance companies⁶⁰
- Commission rules against special tax regime for the co-ordination centres based in the Basque province of Biscaye⁶¹
- Special fiscal treatment of banking foundations in Italy which do not carry out an economic activity is not state aid⁶²
- Tax breaks - Commission finds Åland (Finland) preferential tax scheme incompatible⁶³

⁵⁴ IP/02/1866

⁵⁵ IP/02/1851

⁵⁶ IP/02/1849

⁵⁷ IP/02/1847

⁵⁸ IP/02/1748

⁵⁹ IP/02/1485

⁶⁰ IP/02/1481

⁶¹ IP/02/1236

⁶² IP/02/1231

- Commission closes investigation regarding Italian State aid schemes favouring certain public undertakings Illegal aid awarded must be recovered while the exemption from asset transfer tax does not constitute State aid⁶⁴
- Commission decides not to raise objections to state aid relating to the exemption of biodiesel production from excise duty in Italy⁶⁵
- Commission decides to terminate proceedings concerning the aid scheme applied by France relating to a differentiated rate of excise duty on biofuels⁶⁶
- Commission approves Northern Ireland exemption from the Aggregates Levy⁶⁷
- Commission approves the UK Climate Change Levy's Dual-Use Exemption⁶⁸
- Commission approves prolongation of tax reductions from the German Ecotax after 31 March 2002⁶⁹
- On May 3, the Council adopted three Decisions on the granting of a national aid by the authorities of the Netherlands⁷⁰, Italy⁷¹ and France⁷² in favour of road transport undertakings. These Decisions ensure that the measures adopted by the Council⁷³ on 12 March 2001 authorising the Netherlands, Italy and France to apply until 31 December 2002 reduced rates of excise duty for certain mineral oils in favour road hauliers are considered compatible with the common market.

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 Nineteenth Annual Report on monitoring the application of Community law (2001) was published in June 2002⁷⁴.

See also the following press releases on infringements on the website of the Directorate General for Taxation and the Customs Union at:

http://europa.eu.int/comm/taxation_customs/publications/official_doc/press_releases_2002_en.htm#IP2002

- Taxation of investment funds: infringement procedure against Germany
- Mutual assistance in tax matters – Commission refers UK to Court over Gibraltar

⁶³ IP/02/1029

⁶⁴ IP/02/817

⁶⁵ Bulletin 5-2002, point 1.4.52

⁶⁶ Bulletin 5-2002, point 1.4.53

⁶⁷ IP/02/607

⁶⁸ IP/02/491

⁶⁹ IP/02/240

⁷⁰ Council Decision 2002/361/EC

⁷¹ Council Decision 2002/362/EC

⁷² Council Decision 2002/363/EC

⁷³ Council Decision 2001/224/EC

⁷⁴ http://europa.eu.int/comm/secretariat_general/sgb/infringements/19report_2001_en.htm

- VAT - the Commission has decided to bring an action against Italy before the Court of Justice for refunding delays
- Direct taxation – the Commission will be calling on Belgium to amend its legislation on inheritance and registration taxes
- Direct taxation: the Commission is asking France to eliminate a discriminatory aspect of the tax reduction for childcare costs
- Vehicle taxation : the Commission takes Greece to the Court of Justice.
- The Commission decides to take Greece to the Court of Justice for its special tax on pleasure craft
- VAT on road tolls: infringement proceedings against United Kingdom for failure to implement Court ruling
- Excise duties: Commission asks Belgium to amend its rules on manufactured tobacco
- Mutual assistance in tax matters - infringement proceedings against UK concerning Gibraltar
- VAT: infringement procedures against Spain, Italy and Belgium
- VAT/excise: infringement proceedings against the Netherlands, Italy and France for failure to implement Court judgments
- Car tax: Commission asks Greece to change its practices on personal imports
- Stock exchange taxes: Commission decides to refer Belgium to Court
- VAT: infringement proceedings against Italy for refunding delays
- Direct taxes: infringement proceedings against France and Spain
- VAT: infringement proceedings against UK for failure to implement a Court ruling and incorrect

9. EUROPEAN COURT OF JUSTICE JUDGEMENTS

For judgements of the European Court in 2002 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/publications/info_doc/info_doc.htm#General

10. ACTIVITIES OF THE EUROPEAN PARLIAMENT

The European Parliament always provides its opinion on Commission proposals in the tax field. In most other fields, there has been a movement from unanimity voting in the Council of Ministers to co-decision between the Council of Ministers and the European Parliament. The Commission's 2001 proposal for a Decision for the Member States to commit themselves to computerising the documents that accompany products subject to excise duty was made on the basis of co-decision by the Council and the European Parliament and the Council adopted its common position on this basis at the ECOFIN Council on 21 January 2003.

The Parliament delivered positions in 2002 on the following Commission tax proposals and Communications mentioned earlier in the report – for further information see website of the Parliament at

http://www.europarl.eu.int/home/default_fr.htm

- 5 February – Proposal for a Directive concerning excise duties on tobacco
- 6 February – Proposal for a regulation concerning mutual assistance in the field of direct and indirect taxation
- 7 February - Proposal for a Council Decision authorising Portugal to apply a reduced rate of excise duty in Madeira and the Azores on rum, liqueurs and eaux de vie produced and consumed locally
- 14 March - Communication “Tax policy in the European Union – Priorities for the years ahead” and Communication on Company Taxation
- 14 March - Proposal concerning a standard format for the exchange of information between Member States for the purpose of taxation of savings to be used under the terms of the future savings directive
- 25 April – Proposal for a regulation⁷⁵ concerning administrative co-operation in the field of indirect taxation (Parliament’s opinion was on the legal base of the proposal)
- 13 June - Proposal to authorise the Spanish authorities to lay down total exemptions from or partial reductions from the AIEM tax in the Canary Islands
- 2 July - Proposal for a Directive applying a reduced rate of excise duty to biofuels
- 12 September – Position (first reading under co-decision rules) concerning the computerisation of the movement and surveillance of excisable products
- 24 September - Proposal to amend the VAT rules for travel agents
- 24 October - Fiscalis 2003-2007 programme was adopted by the Parliament and the Council under the co-decision procedure.
- 20 November - Proposal to extend the exemption from dock dues in the French overseas departments

⁷⁵ COM (2000) 349

- 20 November - Proposal extending by one year the period for the application of a reduced VAT rate to labour-intensive services

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

The Commissioner for Taxation and the Internal Market, Frits Bolkestein, briefed the Parliament regularly on tax developments.

11. ACTIVITIES OF THE ECONOMIC AND SOCIAL COMMITTEE (ECOSOC)

This Committee is also required to provide its opinion on Commission proposals in the tax field. See website at: <http://www.esc.eu.int/pages/en/home.htm>

Important opinions adopted in 2002 on the Commission tax proposals mentioned earlier in this Report included the following:

- 16 January - Proposal for a regulation concerning mutual assistance in the field of direct and indirect taxation⁷⁶
- 24 April - Biofuels proposal
- 29 May - Proposal concerning the computerisation of the movement and surveillance of excisable products
- 17 July - Company taxation (own initiative)
- 17 July - FISCALIS programme
- 17 July - Proposal concerning the application of VAT to travel agents on 17 July.

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/home.htm>

The Committee adopted its opinion on the Commission biofuels proposal in May 2002

13. TAX PUBLICATIONS OF THE EUROPEAN COMMISSION IN 2002

13.1. Speeches by Commissioners

*Frits Bolkestein, Commissioner for Taxation and the Internal Market*⁷⁷

⁷⁶ COM (2001) 294

⁷⁷ All speeches by Commissioner Bolkestein are available on the press release database of the European Commission at: <http://europa.eu.int/rapid/start/welcome.htm>

- "The Internal Market: Meeting the challenges of the Lisbon strategy and making change happen" Address to the EU Economic and Social Committee (Internal Market Section) Brussels, 25th January 2002⁷⁸
- "Integratie van de Europese financiële markt en gevolgen daarvan voor de EU-pensioenmarkten" Toespraak op het Symposium georganiseerd door F&C Netherlands BV en Achmea Pensioenen. Leiden, 21 March 2002
- "The Internal Market: facing the challenge of an enlarged EU" Address at Budapest Economics University Budapest, 22nd March 2002⁷⁹
- "Towards an Internal Market without tax obstacles" European Commission conference on company taxation in the European Union, Charlemagne Building Brussels, 29th April 2002⁸⁰
- "Economic reform in the European Union" Speech at Stanford University San Francisco, 24th May 2002.⁸¹

Mario Monti European Commissioner for Competition Policy

- "EU Policy towards fiscal state aid" Seminar on State Aid and Tax - Universiteit Nyenrode, The Netherlands, 22 January 2002⁸²

13.2 Publications produced by the Directorate General for Taxation & the Customs Union⁸³

- Study on Vehicle Taxation in the Member States of the European Union, Jan. 2002
- Taxation of cars transferred within the Community or used regularly on cross-border journeys – Information document of September 2002
-
- Inventory of taxes in the Member States of the European Union – updates for Finland, Germany, the Netherlands, Portugal, Sweden and the United Kingdom
-
- The excise duty rates applicable in the European Union – situation in August 2002
VAT rates applied in the Member States of the European Community. Situation at 1 May 2002.
- VAT in the European Community. Application in the Member States, facts for use by administrations / traders / information networks etc. Update July 2002

⁷⁸ SPEECH/02/21

⁷⁹ SPEECH/02/128

⁸⁰ SPEECH/02/187

⁸¹ SPEECH/02/229

⁸² SPEECH/02/15

⁸³ All publications are available on the website of the Directorate-General for Taxation and the Customs Union of the European Commission at http://europa.eu.int/comm/dgs/taxation_customs/index_en.htm

13.3 Publications produced in other areas of the Commission

- Fiscal Measures to Reduce CO2 Emissions from New Passenger Cars. A report made for the European Commission's Directorate-General for Environment. January 2002. In English only⁸⁴.
- Sector and size effects on effective corporate taxation.⁸⁵ European Commission Directorate-General for Economic and Financial Affairs – Economic papers – No. 175.
- Study on the Mobility and Free Movement of People and Products in the European Cultural Sector.⁸⁶ European Commission, Directorate General for Education and Culture
- Income on the move⁸⁷ – study of 12/12/2002 by the Directorate General for Employment in the European Commission exploring how the distribution of income and poverty rate are influenced by the redistributive role of welfare states.

14. CONFERENCES AND SEMINARS ORGANISED BY THE EUROPEAN COMMISSION

14.1 Conference on company taxation on 29-30 April in Brussels⁸⁸ (Follow up the the Commission Communication on company taxation of 23 October 2001).

Business operators and academics gave considerable support to the Commission's suggestion that companies should ultimately be allowed to use a single consolidated tax base for their EU-wide business activities. During the conference, more than 500 high-level tax specialists from the public and private sectors in the EU, candidate countries and beyond debated the four options that the Commission had presented to achieve this objective and their political and technical implications. Discussions will continue with Member States and all interested parties and the Commission will at the same time work on the technical aspects. The Commission will publish a progress report in early 2003

14.2 Fiscalis Seminars (Co-operation between tax administrations under the Fiscalis programme):

- Examination of the state of play of actions currently undertaken in the field of the circulation of excise duty goods – Chester, UK, 22-24 April 2002
- Implementing new recovery measures – Viterbo, Italy, 29-31 May 2002. This seminar was organised to facilitate a smooth implementation of the new recovery directive⁸⁹.
- Control and Auditing for VAT purposes of Internet Businesses – Santiago de Compostela, Spain, 5-7 June 2002. This seminar considered auditing in the field of e-commerce with a view to improving compliance in this sector

⁸⁴ http://europa.eu.int/comm/taxation_customs/taxation/car_taxes/co2_cars_study_25-02-2002.pdf

⁸⁵ http://europa.eu.int/comm/economy_finance/publications/economic_papers/2002/ecp175en.pdf

⁸⁶ http://europa.eu.int/comm/culture/eac/mobility_en.pdf

⁸⁷ http://europa.eu.int/comm/employment_social/news/2002/dec/income_on_the_move_en.pdf

⁸⁸ For further info. see http://europa.eu.int/comm/taxation_customs/taxation/company_tax/conference.htm

⁸⁹ Council Directive 2001/44/EC

- Joint tax/customs seminar on Risk Analysis – Granada, Spain, 17-19 June 2002. Examined a common approach to the risk management process by tax and customs administrations.
- Heads of CLO - Helsinki, Finland, 5-6 September 2002. This Seminar is an annual meeting of the national heads of VAT mutual assistance, designed to improve co-operation and best practice.
- VAT problems linked to telephone cards – Netherlands, 26-27 September 2002. Addressed the problems linked to inter-community supplies of telephone cards and their different VAT treatment in Member States, which can lead to double- or non-taxation
- E-auditing, including training aspects – Luxembourg, 9-11 October 2002. This seminar was organised with a view to pooling experience in the area of computerised audits and raising the level of knowledge of new audit technology. It was also designed to help Member States, as well as future Member States, to adopt e-audit procedures which is urgent in view of the entry into force of the EU e-invoicing directive⁹⁰ on 1 January 2004.
- Excise Control methods – Ancona, Italy, 16- 18 October 2002
- Fiscalis Programme Management - Sweden, 13-15 November 2002. This seminar was organised to launch the new Fiscalis 2003-2007 programme with a common understanding of its management framework and objectives
- VAT Fraud - Dublin, Ireland, 20-22 November 2002. Dealt with carousel fraud with a special focus on the missing trader fraud problems.
- VAT avoidance schemes linked to determination of taxable amount -Greece, 27-29 November.

14.3 Seminars for Candidate Countries

- Interpretation and application of the Community VAT provisions – Brussels, 15 April 2002
- Excise Duties – Brussels, 12 July 2002
- Direct Taxation – Brussels, 16 September 2002
- Collection and control of VAT in the context of Community provisions for administrative co-operation and mutual assistance – Brussels, 16-17 December 2002

⁹⁰ Council Directive 2001/115/EC

ANNEX

GENERAL POLICY DEVELOPMENTS WITH A TAX DIMENSION

Future of Europe

Commission Communication on the future of Europe⁹¹

In a Communication of 5 December 2002 on the future of European Union (“For the European Union – Peace, Freedom, Solidarity”) the Commission proposed far-reaching changes to the European institutions and a simplification of decision-making. The main themes of the Commission’s proposals were to enhance the role of the European Parliament, a majority voting system for the European Council and that the Commission should be more politically accountable to the Parliament and the Council. It also proposed that the President of the Commission be elected by the European Parliament. As regards the voting issue, the Commission proposed that the few situations where the unanimity voting rule in the Council of Ministers still applies (e.g. taxation) should be scrapped and replaced by majority voting; in a Union of 25 or more Member States, the whole system would rapidly seize up if just one of the Member States could hold out against EU action. In an integrated market, the economic players must have a level playing field. Without this, any changes would damage precisely our European model of society and the values which are prized by the European democracies. Abandoning the principle of unanimity must therefore also apply to fiscal and social issues which have an impact on the smooth operation of the internal market.

Enterprise

Commission Communication on Industrial Policy⁹²

The Commission on 11 December presented a Communication on the industrial policy challenges that Europe must take up now if it is to deliver on European citizens' rising environmental, employment, social and public health expectations. The Commission expects this Communication on Industrial Policy in an Enlarged Europe to launch a pan-European debate on how best to enhance industry's vibrancy, dynamism, and world-wide competitiveness, so as to achieve economically, socially and environmentally balanced growth. It invites contributions from all stakeholders to this debate. The Communication stresses the need for fiscal incentives (favourable tax treatment of innovation-related expenditure) to foster innovation. It points to the dangers for SME growth of a relatively high tax burden. It comments that differences in indirect taxation may distort internal trade and fragment the market for goods and services. The complexities of the 15 national corporate tax systems create obstacles to cross-border activities and to the realisation of the benefits of the internal market.

⁹¹COM (2002) 728 final. See also website concerning the Convention on the future of Europe at <http://european-convention.eu.int/bienvenue.asp?lang=EN>

⁹² COM(2002) 714 final

1.9 Risk Capital

The Commission in its fourth progress report⁹³ of 17 October on the implementation of the Risk Capital Action Plan of 31 March 1998⁹⁴ called for renewed efforts to boost flagging markets for risk capital. The report acknowledges important progress over the last year in the modernisation of the regulatory framework for risk capital, and in particular the successful introduction of euro notes and coins and important steps towards finalising the implementation of the EU's Financial Services Action Plan⁹⁵. However, it calls for more effort on the pan-European patent and on breaking down undesirable tax barriers. Risk Capital operators still face undesirable structural barriers (e.g. more favourable tax treatment for debt than for equity financing) and cross-border constraints, which will have to be removed.

Environment

EU Progress on Climate Change

On 10th December, the EU Council of Environment Ministers unanimously reached political agreement on a common position on the Commission's proposal for an EU greenhouse gas emissions trading system⁹⁶. In accordance with the co-decision procedure, once the Council's common position is formally adopted at a forthcoming session it will be sent to the Parliament for a second reading. Under the scheme, which is the first trans-national emissions trading scheme in the world, operators emitting greenhouse gases will be obliged to obtain a permit from their national authorities. Permits will only be issued provided that applicants can prove that they can monitor and report gas emissions accurately. Industries would then be entitled to emit a certain number of measured units of gas under their permit. Should an operator be unable to meet these targets, they would have the option of buying units from operators that have met their obligations and have units to spare. Operators who fail to comply with the terms of their permit will face financial penalties. The proposal notes that energy taxes aimed at tackling carbon dioxide emissions and emissions trading should be designed in such a way that they act as complementary instruments for covering the totality of emissions.

Social Policy

Increasing labour force participation and promoting active ageing

The Commission in a report of 24 January 2002 on "Increasing labour force participation and promoting active ageing"⁹⁷ made proposals to increase participation in EU labour markets. The report says that the EU must create 20 million new jobs of which 11-12 million for women and 5 million for older workers if it is to hit the targets set at the Lisbon and Stockholm European Councils for employment by 2010. It also highlights the necessary policy responses to achieve this : more public funds for training workers, a focused review of tax/benefit systems, more work on combatting gender pay gaps and looking again at how to reduce school drop-out rates. The report, designed to be a joint Council and Commission effort, was presented to the Barcelona European Council in March.

⁹³ COM (2002) 563

⁹⁴ SEC(1998)552 final

⁹⁵ see http://europa.eu.int/comm/internal_market/en/finances/general/action.htm

⁹⁶ COM (2002) 0680

⁹⁷ COM(2002)9 final, 24 January 2002

Shadow economy

The Commission on 26 February published a study "Undeclared labour in Europe. Towards an integrated approach of combating undeclared labour"⁹⁸. The study covers 7 Member States chosen by the compiler of the study (Germany, Spain, France, Italy, the Netherlands, Sweden and the UK). The purpose of the study is to review policies to combat undeclared work and to evaluate the effectiveness of specific policies or mix of policies adopted by different Member States. The report, prepared for the Commission by independent consultants, is a follow-up to the Communication on undeclared work issued by the European Commission in 1998⁹⁹. The study concludes that the most effective policy action to combat undeclared work consists of a policy mix. The optimal approach consists of both preventive action and sanctions: simplification of procedures and legislation; increased public awareness of the possible negative effects of undeclared work and the shadow economy; exchange of information and increased communication; co-operation between authorities; surveillance and sanctions; lowering the tax burden on labour.

Employment in Europe 2002 Report

The Commission in its annual report on Employment in Europe¹⁰⁰ published on 6 September stated that the job targets set at the Lisbon European Council in March 2001 were still within reach if Member States tackled problem regions and focused on jobs for women and older workers. Far-reaching reforms in tax-benefit and pensions systems, improved access to life-long learning opportunities as well as changes in the mentality of both employers and employees will be needed to achieve this target.

Employment Report 2002

The Commission on 13 November 2002 adopted the report¹⁰¹ on Member States' employment performance which it is required under the EC Treaty to present annually – the latest covers performance in the year 2001. The report acknowledges positive results so far in creating new jobs and switching to job-friendly policies in spite of a more difficult economic environment. But the Commission also calls on governments, business and trade unions to maintain commitment to labour market reforms. In the tax field, the upward trend in the tax burden on labour has been reversed but labour taxes remain high, even for low-paid workers and insufficient attention has been given to the employment impact of social security contributions. A small, though growing, number of Member States (Belgium, France, the Netherlands, the United Kingdom, Denmark) are addressing the interaction between tax and benefit schemes (e.g. for unemployment). The rapid withdrawal of benefits as people earn income from taking up work is now widely recognised as a major disincentive to seek employment and Member States implemented a variety of measures to address this issue. Incentives to take up work have been improved by making increasing use of employment-conditional benefits. Several Member States (the United Kingdom, Ireland, Finland France, Belgium, Italy and the Netherlands) are extending the use of In-work Tax Credit schemes.

'Free Movement of Workers - achieving the full benefits and potential'

The Commission adopted this Communication on 9 December 2002¹⁰². Free movement of

⁹⁸ A publications of the Directorate general for Employment and Social Affairs in the European Commission – see http://europa.eu.int/comm/employment_social/docs/undeclared_labour.pdf

⁹⁹ COM (98) 219 final of 7 April 1998

¹⁰⁰ See under « Key Documents » at http://europa.eu.int/comm/dgs/employment_social/key_en.htm

¹⁰¹ COM(2002) 621 final

¹⁰² COM(2002)694

persons is one of the fundamental freedoms guaranteed by the EC Treaty. This Communication explains some of the most important issues for migrant workers and their families, including tax issues, and the way the Commission deals with them, in view of the case law of the Court of Justice of the European Communities.

Trade

Foreign Sales Corporations

The Commission on 13 September published a list¹⁰³ of products that could be subject to countermeasures, for consideration by the European industry. The amount of the list exceeds the amount awarded by the WTO in order to allow for exclusions of products following the consultation procedure. On 30 August the European Union was granted by the WTO the right to impose countermeasures in the form of tariffs on imports of certain goods from the US. The tariffs can be up to 100 percent ad valorem, to a maximum of US \$ 4,043 million per year. The Commission invited European industry to present their comments on the list within 60 days from the date of publication, i.e. before 12 November 2002. Having received the comments of European industry, the Commission will consult Member States before notifying the final list to the WTO.

EU-Chile Association Agreement

This Agreement was signed on 18 November 2002¹⁰⁴. The political chapter of the Association Agreement aims at strengthening the political dialogue between the EU and Chile, including an increased co-operation in the fight against terrorism. The part on trade relations in the Association Agreement covers all the areas of the EU-Chile trade relations and goes well beyond their WTO commitments. For the first time, a fully-fledged free trade agreement in services has been included in the Association Agreement that will apply to public procurement markets as well as to the liberalisation of investment. The Agreement also includes rules on competition, intellectual property and an effective dispute settlement mechanism. The Agreement requires co-operation between the Parties inter alia by developing a legal framework that favours investment through the conclusion, where appropriate, of bilateral agreements between the EU Member States and Chile to promote and protect investment and avoid double taxation. The Agreement contains a tax carve-out clause to prevent conflict with double tax agreements or internationally accepted principles of taxation.

EU Annual Report on US Trade Barriers

On 20 November 2002 the European Commission released its eighteenth annual report¹⁰⁵ on barriers to trade and investment in the US, providing an overview of the obstacles that EU exporters and investors face in the US. A number of impediments, ranging from tariff and non-tariff barriers to differences in legal and regulatory systems and including a number of tax issues need to be tackled.

Work Programme

Commission Legislative and Work Programme for 2003

The Commission adopted its Legislative and Work Programme for 2003¹⁰⁶ on 30 October 2002. The Programme shows how the Commission will work for a successful enlargement of

¹⁰³ OJ C217, 13/9/2002

¹⁰⁴ See http://europa.eu.int/comm/external_relations/chile/assoc_agr/text.htm

¹⁰⁵ See http://europa.eu.int/comm/trade/mk_access/ustbr2002.pdf

¹⁰⁶ COM (2002) 590 (02)

the European Union, contribute towards stability and security for EU citizens, and continue making progress towards a sustainable and inclusive EU economy. The programme lists a range of proposed measures to enhance competitive conditions in the internal market, including in the tax field measures to assist Member States to combat cross-border tax fraud, measures to improve co-ordination of national fiscal systems and legislative and non-legislative measures that will adapt the VAT system to the modern economy, in particular to e-commerce.

Ombudsman

Ombudsman calls on Council to review its refusal to release taxation report

The European Ombudsman, Jacob Söderman, on 17 June¹⁰⁷ called on the Council to reconsider its refusal to give access to a report on business taxation to a firm of consultants. This re-examination should be based on the new rules on access to documents that came into force in December 2001.

¹⁰⁷ See complaint 573/2001/IJH - <http://www.euro-ombudsman.eu.int/recommen/en/010573.htm>