Company taxation: Commission welcomes agreements on improvements to Mergers Directive

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The European Commission has welcomed the political agreement by the EU's Council of Finance Ministers on a proposal to amend 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 that is based on a Commission proposal of October 2003 (see IP/03/1418) would, in particular, broaden the existing Directive's scope to cover a larger range of companies including the European Company (see IP/01/1376) and the European Co-operative Society (see IP/03/1071); provide for a new tax-neutral regime for the 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'.

"I welcome the Council's political agreement on this proposal that will extend to a much larger range of companies a set of tax rules that facilitate cross-border corporate re-structuring" commented Taxation and Customs Commissioner László Kovács. "This amendment will become even more important on the entry into force of the company law cross-border Mergers Directive which seems to be on its way to agreement as a result of the Competitiveness Council's discussions two weeks ago."

The main elements of the proposal to improve the operation of the "Mergers" Directive are as follows:

The list of companies to which the Directive applies would be expanded to cover new, specified, legal entities, including certain co-operatives and non-capital based companies, mutual companies, savings banks, funds and associations with commercial activity. The new list would include the European Company and the European Co-operative Society that can be created from 2004 and 2006, respectively, with the result that companies and co-operatives operating in more than one Member State will have the option of establishing themselves as single entities under Community law;

The transfer of the registered office of a European Company or of a European Co-operative Society from one Member State to another would not result in taxation of capital gains. The intention is that the facility to make such a transfer, which is specifically provided for in the Statutes governing those entities, would not be hampered by discriminatory tax rules or by unjustified restrictions or distortions;

The application of the tax deferral regime in the Directive where a company decides to convert its foreign branch into a subsidiary would be clarified;

The Directive would be expanded to cover a new type of operation, known as a "partial division" or "split-off", whereby an existing company transfers one or more of its branches of activity to an existing or newly created sister company.