Company taxation: Commission reviews progress on removal of cross-border tax obstacles

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An overview of the European Commission's efforts to remove the tax obstacles affecting businesses operating across frontiers within the Internal Market has just been presented by the Commission. In it, the Commission confirms its commitment to its 2001 strategy (see IP/01/1468) for a series of legislative proposals and initiatives to address specific tax obstacles in the short term, as well as for work on a more wide-ranging long-term solution of allowing companies to use a single company tax base (taxable profits) for all their EU-wide activities. Good progress has been achieved on targeted initiatives with new legislative proposals under discussion in the EU's Council, more proposals and guidelines planned and a forum in place to tackle transfer pricing tax problems. With regard to the longer term, the Commission presents ideas for a pilot scheme that would allow small and medium-sized enterprises to use the tax rules of their home state for computing their EU-wide taxable profits. It also announces plans for work with Member States and businesses on using financial accounts as a starting point for a single tax base (taxable profits) and on possible arrangements for apportioning a single base between different Member States. The Commission's report will be discussed at a Company Tax Conference in Rome on 5-6 December (see IP/03/1395).

"The Commission is convinced that the elimination of tax obstacles to cross-border business is crucial to the development of the EU Internal Market, economic growth and job creation," commented Taxation Commissioner Frits Bolkestein. "The Commission's strategic programme for company taxation is designed to tackle these tax obstacles in a comprehensive manner while fully respecting Member States' fundamental prerogatives in tax matters, in particular their right to set tax rates."

The Commission reports that the tax obstacles it identified in 2001 still largely exist. It therefore confirms its commitment to the two-track strategy it presented that year for a series of legislative proposals and initiatives to address specific tax obstacles, as well as for work on a more wide-ranging long-term solution of allowing companies to use a single company tax base (taxable profits) for all their EU-wide activities. The latter is in the Commission's view ultimately the only means to overcome the tax problems in the Internal Market in a systematic way.

Progress with specific targeted initiatives

Guidance on interpreting tax decisions of the European Court of Justice

The Commission intends to present a Communication at the end of this year on the effect of decisions of the European Court of Justice on Member States' dividend tax systems. The tax decisions of the Court are beginning to have far-reaching effects on tax systems and the Commission hopes to promote more pro-active co-ordination of those features of Member States' tax systems that are or are likely to be in conflict with EU law.


The EU's Council of Ministers is currently discussing the proposals that the Commission made earlier this year to broaden the scope of the Parent-Subsidiary and Mergers Directives to cover a larger range of companies, including the European Company and the European Co-operative Society, relax the conditions for companies to benefit from the Directives and resolve some of the existing shortcomings of these Directives (see IP/03/1214 and IP/03/1418). The Commission hopes that the Council will adopt both Directives in time for the entry into force of the European Company Statute in October 2004.

Cross-border loss-offset
The Commission will consult with Member States with a view to presenting an initiative in late 2004/early 2005 to tackle the current limits on cross-border loss relief within the EU. At present in most countries parent companies cannot take account for tax purposes of losses incurred by subsidiaries located in other countries.

The "EU Joint Forum on Transfer Pricing"

The Commission established a Forum in 2002 (see IP/02/1105) to ensure better co-ordination between Member States and between Member States and businesses in the taxation of intra-group cross-border transactions. Double taxation of cross-border transactions can arise where two Member States do not agree on transfer prices between two associated companies. Furthermore there is a tendency for Member States to impose increasingly onerous transfer pricing documentation requirements. The Forum will report on its activities so far and make pragmatic recommendations to solve some of these problems in early 2004.

Double Taxation Treaties

The Commission is currently considering closely the possible conflicts between the EC Treaty and the bilateral double taxation treaties that Member States have concluded with each other and with third countries. Issues include the question of equal treatment of EU residents and the application of bilateral treaties in situations where more than two countries are involved. The Commission intends to present a legal analysis of the relevant rulings of the Court of Justice in this area in late 2004/early 2005 together with possible solutions such as the creation of an EU version of the OECD Model Convention on which Member States' bilateral tax treaties are based or a multilateral EU tax treaty.

Single EU tax base (taxable profits)

The Commission has consulted widely on ways of enabling companies to use a single EU-wide tax base (taxable profits) for their cross-border business. The Commission plans initiatives in three areas as a result of these consultations:

Despite differences of views among business representatives, industry and Member States on the detail, there is general agreement within the business community and growing support in the political world for a pilot scheme to allow Small and Medium Enterprises to use the tax rules of their home state for calculating their EU-wide taxable profits. These companies would particularly benefit from the resulting simplification and reduction of tax compliance costs. The Commission therefore proposes to discuss with representatives of business and interested Member States the detailed arrangements for such a pilot scheme. The Commission will make a recommendation for action in this field in 2004.

The Commission considers that accounting rules are key to the concept of a common tax base (taxable profits). The International Financial Reporting Standards (IFRS, formerly known as International Accounting Standards), the EU compulsory standards for the consolidated accounts of listed companies as from 2005 (see IP/03/1297), provide a useful neutral starting point for discussing the technical tax issues. The Commission intends to establish an Expert Group to discuss the detailed tax principles that would have to be applied on the basis of using the IFRS as a starting point.

Central to the establishment of a consolidated tax base (taxable profits) would be the arrangements for sharing tax base (taxable profits) between Member States. The Commission proposes to continue research into the issues that would be relevant to tax base (taxable profits) sharing, such as definitions of groups of companies and of income, formulae and weightings. It also proposes that discussions with Member States and companies should be started on how real data could be obtained on the current EU tax base (taxable profits) distribution which could provide a starting point for this work.

The full text of the Communication “An Internal Market without company tax obstacles achievements, ongoing initiatives and remaining challenges” is available on the Europa internet site:

http://europa.eu.int/comm/taxation_customs/whatsnew.htm

For further information, see also MEMO/03/237.